

Achieving Peace in Iraq Through Negotiations: Lessons Learned from the Northern Ireland Peace Process*

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I. INTRODUCTION

As a consequence of the United States' invasion of Iraq and the ouster of Saddam Hussein's regime, the Iraqi government collapsed, and a power struggle developed.¹ Many Sunnis and Shi'ites in Iraq have become members of militias, and most support denomination-based political parties.² Sectarian violence has at times led some to believe that the country was at civil war, or that civil war was imminent.³ Since the three largest ethnic-religious groups

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¹ See The Iraq Crisis-Timeline Chronology of Modern Iraqi History, MIDEASTWEB, <http://www.mideastweb.org/iraqtimeline.htm> (last visited June 2, 2009); see generally MICHAEL R. GORDON & GEN. BERNARD E. TRAINOR, COBRA II: THE INSIDE STORY OF THE INVASION AND OCCUPATION OF IRAQ (Vintage Books 2007) (2006).

² See Noah Feldman, *Power Struggle, Tribal Conflict or Religious War?*, TIME, Feb. 26, 2006, available at <http://www.time.com/time/magazine/article/0,9171,1167736,00.html> (explaining that when governments collapse, people look for security wherever they can get it, and, typically, this is through finding some group or association that is capable of keeping the person safe. Often ethnicity, race, or religion provides a basic bond that may be enough to ensure loyalty amongst members of a militia or a political party. Other arguments provide that, in addition, ethnic conflict, tribalism, class, and social status are also significant factors in the instability and conflict in Iraq); see also David Gritten, *Long Path to Iraq's Sectarian Split*, BBC NEWS, Feb. 25, 2006, http://news.bbc.co.uk/2/hi/middle_east/4750320.stm (last visited June 2, 2009).

³ Duncan Kennedy, *Iraq: The Case for Losing*, 31 BROOK. J. INT'L L. 667, 669–70 (2006) (discussing population shifts and homogenizing of neighborhoods in Iraq and stating that “[a] civil war between Sunni and Shia is already under way.”); Ibrahim Al-

tend to live in distinct parts of the country,⁴ some have advocated for a partition as the only solution.⁵ The situation in Iraq since American occupation has been very volatile,⁶ but in recent months, sectarian violence has substantially decreased.⁷ Many have argued that the decrease in violence between and amongst different ethnicities in Iraq resulted from the American military surge.⁸ Less attention, however, has been devoted to the actions of Iraqi leaders—which may also have contributed to the reduction in violence.⁹

Marashi, *The Dynamics of Iraq's Media: Ethno-Sectarian Violence, Political Islam, Public Advocacy, and Globalization*, 25 CARDOZO ARTS & ENT. L.J. 95, 97–98 (2007) (discussing the bombing of the revered Shi'a Al-'Askariyya shrine in the city of Samarra, sectarian killings, and the conflict over oil-rich city of Kirkuk between Arabs, Kurds, and Turkmen); Aparisim Bobby Ghosh, *An Eye for an Eye*, TIME, Feb. 26, 2006, available at <http://www.time.com/time/magazine/article/0,9171,1167741,00.html> (quoting Isam al-Rawi, a Baghdad University geology professor and Sunni politician responding to the bombing of the mosque in Samarra by pronouncing “This is it. The Shi'ites are going to go mad. This is the start of the civil war.”); see also Feldman, *supra* note 2.

⁴ Most Shi'ite Arabs live in Southern Iraq, Sunni Arabs live in Central Iraq, and Sunni Kurds live in Northern Iraq. *Life in Iraq: People*, BBC NEWS, http://news.bbc.co.uk/2/shared/spl/hi/in_depth/post_saddam_iraq/html/3.stm (last visited June 2, 2009).

⁵ PETER W. GALBRAITH, THE END OF IRAQ: HOW AMERICAN INCOMPETENCE CREATED A WAR WITHOUT AN END 12 (2006); see also Peter W. Galbraith, *The Case for Dividing Iraq*, TIME, Nov. 13, 2006, at 28, 28–32.

⁶ See Iraq Coalition Casualty Count, <http://icasualties.org/Iraq/index.aspx> (last visited June 2, 2009) (providing both military and civilian death statistics by month). Some believe non-Iraqi insurgents intentionally try to spark sectarian violence through acts such as the bombing of the Al-'Askariyya shrine. George W. Bush, President of the United States, Press Conference at White House Conference Center Briefing Room (Aug 21, 2006), available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/08/21/AR2006082100469.html> (stating: “Secondly, it’s pretty clear—at least the evidence indicates—that the bombing of the shrine was an Al Qaida plot, all intending to create sectarian violence.”).

⁷ Associated Press, *Violence is Down but Continues*, Feb. 17, 2008, available at <http://www.kxmb.com/t/iraq/210293.asp> (stating “The U.S. military says insurgent attacks in Iraq have dropped more than 60 percent since a joint U.S-Iraq crackdown on insurgents began a year ago this week.”); see also *Can a Lull be Turned into Real Peace*, THE ECONOMIST, Dec. 15, 2007, at 28.

⁸ See *Report to Congress on the Situation in Iraq*, 110th Cong. (Sept. 10–11, 2007) (statement of General David H. Petraeus, Commander, Multi-National Force-Iraq) available at <http://foreignaffairs.house.gov/110/pet091007.pdf>; Joe Klein, *David Petraeus*, TIME, Jan. 7, 2008, available at http://www.time.com/time/specials/2007/personoftheyear/article/0,28804,1690753_1695388_1695379,00.html; Mark Urban, *Fragile Success for US Iraq Surge*, BBC NEWS, Dec. 8, 2007, http://news.bbc.co.uk/1/hi/programmes/from_our_own_correspondent/7131468.stm (last visited June 2, 2009); see also Gordon Cucullu, *The Iraq Surge: Why It's Working...*,

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The next part of this note, part II, examines the Helsinki Agreement of 2007—an initial step taken by Iraqi leaders ordering negotiations to achieve national reconciliation. In part III, this note will argue that any negotiations resulting from the Helsinki Agreement should allow all interested parties to partake in the negotiations. A discussion of potential consequences from allowing all parties to participate will be provided; however, part III will demonstrate that, in order to develop and maintain long-term peace, the negotiations must make every attempt to include diverse voices and ideas. Part IV of this note will discuss the role of a leader in the negotiations. The characteristics and qualifications that the leader of such a difficult and significant process should possess will be examined. The final part of this note, part V, will discuss the ramifications of setting a timetable for achieving the ultimate goals of the Helsinki Agreement.

Although all national conflicts and peace processes differ,¹⁰ this note will make suggestions by drawing from the positive and negative consequences of the Northern Ireland peace process. An examination of the Northern Ireland peace process is warranted and may be valuable because of the many similarities between the two conflicts. Both conflicts stem from a long history of dispute¹¹ with both religious and national identity overtones.¹²

NEW YORK POST, Mar. 20, 2007, available at http://www.nypost.com/seven/03202007/postopinion/opedcolumnists/why_its_working_opedcolumnists_gordon_cucullu.htm?page=0 (providing an opinion of a retired U.S. army officer).

⁹ See, e.g., Ewen MacAskill, *Al-Sadr Declares Ceasefire in Iraq*, THE GUARDIAN, Aug. 29, 2007, available at <http://www.guardian.co.uk/world/2007/aug/29/iraq.usa> (explaining Moqtada al-Sadr called for a cease fire on August 29, 2007, without discussing any possible connection to the Helsinki Agreement).

¹⁰ George J. Mitchell, Truman Institute Peace Prize Address: Principles of Peace: Northern Ireland and the Middle East 4 (June 8, 1999) [hereinafter Mitchell, *Principles of Peace*] (explaining: “Each human being is unique. Each human society is unique. It follows logically, then, that no two conflicts are the same. Much as we would like it, there is no magic formula which, once discovered, can be used to end all conflicts.”). John Darby argues a peace process must include the following five criteria: “The protagonists must be willing to negotiate in good faith; the key actors must be included in the process; the negotiations must address the central issues in the dispute; force must not be used to achieve objectives; and the negotiators must be committed to a sustained process.” JOHN DARBY, THE EFFECTS OF VIOLENCE ON PEACE PROCESSES 11 (2001).

¹¹ The British presence in Ireland dates as far back as the Norman Invasion in 1066. Alexander C. Linn, Note, *Reconciliation of the Penitent: Sectarian Violence, Prisoner Release, and Justice under the Good Friday Peace Accord*, 26 J. LEGIS. 163, 164 (2000); see generally CHARLES TRIPP, A HISTORY OF IRAQ (2d ed. 2002) (providing a historical account of the twentieth century in Iraq).

¹² See Kathleen P. Lundy, Note, *Lasting Peace in Northern Ireland: An Economic Resolution to a Political and Religious Conflict*, 15 NOTRE DAME J.L. ETHICS & PUB.

Segregated communities resulted from the disputes in both societies,¹³ and negotiations in each society involve strong paramilitaries, radical, and conservative groups.¹⁴ While each society is unique, and there are clear differences between Northern Ireland and Iraq,¹⁵ an examination of an earlier peace process will provide leaders and participants of a proposed peace process with an understanding of tactics and principles that both succeeded and failed in Northern Ireland.

A brief summary of the conflict in Northern Ireland is provided to establish a cursory understanding of the comparisons that follow.¹⁶ The division of Northern Ireland into unionists¹⁷ and nationalists¹⁸ was a source

POL'Y 699, 699–700 (2001); see also Dominic Bryan, *Parading Protestants and Consenting Catholics in Northern Ireland: Communal Conflict, Contested Public Space, and Group Rights*, 5 CHI. J. INT'L L. 233, 233–34 (2004); George J. Mitchell, *Toward Peace in Northern Ireland*, 22 FORDHAM INT'L L.J. 1136, 1142–43 (1999) [hereinafter Mitchell, *Toward Peace*]; *infra* Part III.A.

¹³ See John Hume, Address, *Acceptance of Diversity: The Essence of Peace in the North of Ireland*, 18 FORDHAM INT'L L.J. 1084, 1085 (1995) (stating “The horrifying consequences of twenty-five years of violence are evident in the fact that Belfast, a city where church-attendance rates remain very high, has thirteen walls separating unionist communities from nationalist communities.”); Lundy, *supra* note 12, at 712 (discussing “peace lines,” which were walls that were purposely built in Northern Ireland to separate communities); see also Larisa Epatko, *Segregated Communities in Iraq May Spell Trouble*, PBS, Feb. 12, 2008 http://www.pbs.org/newshour/indepth_coverage/middle_east/iraq/jan-june08/segregation_02-12.html (last visited June 2, 2009) (discussing the problems caused by segregated communities in Iraq).

¹⁴ See, e.g., Richard E. Neal, *The Northern Ireland Peace Process*, 21 SUFFOLK TRANSNAT'L L. REV. 293, 296 (1998); see also *infra* Part III.A.

¹⁵ In Northern Ireland, a majority of the citizens are Christian, while in Iraq a majority are Muslim. In addition, there are foreign military forces involved in Iraq. Iraq also has a very valuable economic asset—oil—which economically unites the country. While there are differences between the two societies, lessons can be learned from prior peace processes, and even though no two societies are the same, this is a legitimate approach.

¹⁶ Knowledge of the full context of the conflict in Northern Ireland is useful for discussing its applicability to the Iraqi negotiations for reconciliation, but an in-depth review falls outside the scope of this note. Historical accounts include: JONATHAN BARDON, *A HISTORY OF ULSTER* (1992); TIM PAT COOGAN, *THE TROUBLES: IRELAND'S ORDEAL 1966–1996 AND THE SEARCH FOR PEACE* (1995); and DAVID MCKITTRICK & DAVID McVEA, *MAKING SENSE OF THE TROUBLES: THE STORY OF THE CONFLICT IN NORTHERN IRELAND* (2000).

¹⁷ SALLY BELFRAGE, *LIVING WITH WAR: A BELFAST YEAR* xiii (1987) (explaining that Northern Irish conflict is essentially between predominantly Protestant unionists, who favor Northern Ireland's continued political union with Britain, and mainly Catholic nationalists who wish to see Northern Ireland join with the Republic of Ireland to create a

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of strife ever since the Partition of Ireland in 1920.¹⁹ A number of unsuccessful attempts to restore peace to the province were made between the outbreak of “The Troubles” in 1969²⁰ and the Irish Republican Army’s declaration of a ceasefire in August 1994.²¹ The negotiations following the ceasefire included two governments and eight political parties, who eventually achieved the Good Friday Agreement (also known as the Belfast Agreement).²² The Good Friday Agreement was signed on April 10, 1998,²³ and the people of Northern Ireland approved it on May 22, 1998.²⁴ It provided that Northern Ireland would remain within the United Kingdom so long as that was the wish of the people living there; but the British and Irish governments would give effect to arrangements for a united Ireland if a majority vote to that effect was eventually obtained in Northern Ireland.²⁵ The Agreement also included proposals for devolved government and, consequently, the new Northern Ireland Assembly held elections for the first time on June 25, 1998.²⁶

united Ireland); see also James J. Friedberg, *Ambiguity, Sovereignty, and Identity in Ireland: Peace and Transition*, 20 OHIO ST. J. ON DISP. RESOL. 113, 132–33 (2005); PAUL DIXON, *NORTHERN IRELAND: THE POLITICS OF WAR AND PEACE* 6–16 (2001).

¹⁸ Three separate definitions of nationalists are provided. BELFRAGE, *supra* note 17, at xiii; Friedberg, *supra* note 17, at 132–33; DIXON, *supra* note 17, at 6–16.

¹⁹ See, e.g., Christopher K. Connolly, Note, *Living on the Past: The Role of Truth Commissions in Post-Conflict Societies and the Case Study of Northern Ireland*, 39 CORNELL INT’L L.J. 401, 411 (2006).

²⁰ See, e.g., *id.* at 412 (describing “The Troubles” as a period between the 1960s and the 1990s in which “over 3,700 individuals died as a result of political violence in Northern Ireland”); see generally MIKE MORRISSEY & MARIE SMYTH, *NORTHERN IRELAND AFTER THE GOOD FRIDAY AGREEMENT: VICTIMS, GRIEVANCE AND BLAME* (2002) (providing a thorough examination of “The Troubles”); see also DARBY, *supra* note 10, at 17–19 (providing a brief discussion of “The Troubles”).

²¹ See, e.g., Connolly, *supra*, note 19, at 412 (describing the ceasefire as a breakthrough in the dispute); see also Brian D. Vaughan, Note, *Will God Save the Queen? Shared Authority and Sovereignty in Northern Ireland and the Case for Cross-Border Bodies*, 18 WIS. INT’L L.J. 511, 515–19 (2000) (discussing international efforts to promote peace in Northern Ireland).

²² GEORGE J. MITCHELL, *MAKING PEACE* 181–82 (1999) [hereinafter MITCHELL, *Making Peace*].

²³ DIXON, *supra* note 17, at 269.

²⁴ Northern Ireland Elections, The 1998 Referendums, <http://www.ark.ac.uk/elections/fref98.htm> (last visited June 2, 2009).

²⁵ DARBY, *supra* note 10, at 23; see also Friedberg, *supra*, note 17, at 145–47 (quoting the applicable part of the Good Friday Agreement).

²⁶ Northern Ireland Elections, *supra* note 24.

II. HELSINKI AGREEMENT—THE BEGINNING OF NATIONAL RECONCILIATION IN IRAQ

The Helsinki Agreement²⁷ has been described as a “road map” to Iraqi peace.²⁸ From August 31 through September 3, 2007, sixteen representatives of Iraqi parties and blocs²⁹ participated in presentations, held discussions, and “committed themselves to work towards a robust framework for a lasting settlement.”³⁰ Although the seminar was convened by both the Crisis Management Initiative, overseen by former Finnish President Martti Ahtisaari, and the John W. McCormack Graduate School of Policy Studies of the University of Massachusetts in Boston,³¹ the Iraqi representatives mainly drew insight from senior representatives of the Northern Ireland and South African peace processes.³²

Within the Helsinki Agreement, the representatives developed recommendations and political objectives, agreed to consult further on the recommendations, and agreed to start negotiations to reach national

²⁷ Crisis Management Initiative, Helsinki Agreement, Sept. 3, 2007, http://www.cmi.fi/files/Helsinki_agreement_English.pdf (last visited June 2, 2009).

²⁸ Shawn Pogatchnik, *Feuding Iraqi groups hold secret meeting in Finland, official says*, INT’L HERALD TRIBUNE, Sept. 3, 2007 (quoting Jeffrey Donaldson—a Protestant lawmaker from Northern Ireland that facilitated the discussions—calling the Helsinki Agreement a “road map” to Iraqi peace).

²⁹ The identity of the representatives and which parties were represented has not been fully disclosed. According to the Crisis Management Initiative’s press release “[L]eading representatives of Iraqi political parties and others linked to a range of groups close to the conflict” were present. Press Release, Crisis Management Initiative, Sept. 3, 2007, available at <http://www.cmi.fi/?content=press&id=73> [hereinafter *CMI Press Release*]. Both Sunni and Shi’ite leaders were present; however it is not clear whether Kurdish-Sunnis were represented. It has been reported that discussions included representatives Muqtada al-Sadr, Adnan al-Dulaimi, and Humam Hamoudi. See Pogatchnik, *supra* note 28. All press releases make clear that no representatives of occupying forces were present at the discussion.

³⁰ *CMI Press Release*, *supra* note 29.

³¹ *Id.*

³² Leaders of the discussions included participants from the Northern Ireland peace process: Six County Deputy First Minister and Sinn Féin Chief Negotiator, Martin McGuinness, Sinn Féin’s Leo Green, Democratic Unionist Party Lagan Valley MP Jeffrey Donaldson, Billy Hutchinson of the Progressive Unionist Party, and former Stormont Assembly Speaker John Alderdice. *Iraq: Helsinki Agreement Provides Hope for the Future: McGuinness in Iraqi Peace Negotiations*, AN PHOBLAIGHT, Sept. 6, 2007, available at <http://www.anphoblacht.com/news/detail/20563> [hereinafter *McGuinness in Iraqi Peace Negotiations*]. Also present were African National Congress activist Mac Maharaj and National Party reformer Roelf Meyer, both members of Nelson Mandela’s first unity government following the end of apartheid. Pogatchnik, *supra* note 28.

reconciliation.³³ Some recommendations of the parties included: (1) to resolve all political issues through non-violence and democracy, (2) to prohibit the use of arms for all armed groups during the process of negotiations, (3) to work to end international and regional interference in internal Iraqi affairs, (4) to ensure the full participation of all Iraqi parties and blocs in the political process and agreed governance arrangements, and (5) all Iraqi parties and blocs have to build Iraq and contribute efficiently to support all the efforts that would make the political process and Iraqi unity successful and to preserve its sovereignty.³⁴ The representatives also listed nine political objectives, which included: (1) an emphasis on the continuation of constructive dialogue between different political groups aiming to fulfill national goals and (2) to convince political groups that are currently outside the political process to initiate and activate a constructive dialogue to reach common understandings.³⁵ The influence of the Northern Ireland representatives is evident through the similarities of these recommendations and objectives to provisions in the Anglo-Irish Agreement, the Downing Street Agreement, and the Good Friday Agreement.³⁶

Beyond giving approval to principles for future negotiations and committing to working towards a lasting solution, the Helsinki Agreement has initiated a working relationship between Iraqi Shi'ites and Sunnis.³⁷ While Iraqi Sunnis and Shi'ites initially worked together to develop the Iraqi Constitution in 2005, the withdrawal of Sunni leadership during the process indicated difficulty in reaching consensus between the two largest political

³³ CMI Press Release, *supra* note 29.

³⁴ Crisis Management Initiative, *supra* note 27.

³⁵ *Id.*

³⁶ See Pogatchnik, *supra* note 28 (quoting Jeffrey Donaldson—a Protestant lawmaker from Northern Ireland who facilitated the discussions—referring to the similarities).

³⁷ See *id.*; see also Press Release, Univ. Mass. Boston, McCormack Graduate School Professor Leads Secret Iraq Peace Talks, Sept. 4, 2007, available at http://www.umb.edu/news/2007news/releases/sept/peace_talks.html. Six County Deputy First Minister and Sinn Féin Chief Negotiator, Martin McGuinness stated:

Obviously the situation in Iraq is dire at the moment but what binds these people together is that they all consider themselves Iraqis and they all now accept that there needs to be an inclusive process of negotiations; that this should include all of the political forces in Iraq; it should also include the insurgents and the militia; and they all accept that it is vital that they move forward in a united way to try to conclude an agreement as quickly as possible.

McGuinness in Iraqi Peace Negotiations, supra note 32.

groups in Iraq.³⁸ By agreeing on political objectives and making recommendations for national reconciliation in Iraq in the Helsinki Agreement, the representatives were able to separate “problems from politics”;³⁹ and so, the potential for developing consensus and achieving peace through future negotiations is now much greater.⁴⁰

III. WHO SHOULD SIT AT THE TABLE IN FUTURE NEGOTIATIONS RESULTING FROM THE HELSINKI AGREEMENT?

All Iraqi parties that are interested in a peaceful society should have the opportunity to participate in the future negotiations called for in the Helsinki Agreement.⁴¹ In order to discuss who should have a seat at the table, this section will inform the reader of the demographics, political participants, and militia powers in Iraq. This section will also discuss the ramifications of allowing previously violent parties into the negotiations. Further, it will address the importance of allowing minority voices to be heard during the negotiations. Finally, this section will discuss reasons and means to keep parties from leaving the negotiations and reverting to violent activity.

A. *The Demographics, Political Parties, and Militias in Iraq*

Since Iraq is a war zone, accurate estimates of the ethnic and religious makeup of the country are impossible.⁴² However, since many of the Iraqi people have aligned into groups based on ethnicity or religion, understanding general percentages is significant. Approximately 60%–65% of Iraqis are Arab Shi’ites, 15%–20% are Arab Sunnis, and 15%–20% are Kurdish Sunnis.⁴³ The remaining Iraqis are Turkmen, Assyrians, or other

³⁸ Sheikh Dr. Human Hamoudi, *My Perceptions on the Iraqi Constitutional Process*, 59 STAN. L. REV. 1315, 1316 (2007).

³⁹ The Helsinki Agreement announced interests or goals rather than solutions. Consequently, parties did not have to fight over how the goals would be solved. This is the task of future negotiations, but now the parties have centered the debate and shown an ability to build consensus. Crisis Management Initiative, *supra* note 27.

⁴⁰ See Jeremy A. Colby, *Getting to Peace: Avoiding Roadblocks on the Path to Peace in Northern Ireland*, 14 TEMP. INT’L & COMP. L.J. 1, 9–10 (2000).

⁴¹ See *infra* Part III.B

⁴² Aparisim Bobby Ghosh, *The Fleeting Success of the Surge*, TIME, Dec. 13, 2007, available at <http://www.time.com/time/magazine/article/0,9171,1694441,00.html> (estimating over 2,250,000 refugees have fled to Jordan and Syria).

⁴³ Central Intelligence Agency, THE WORLD FACTBOOK-IRAQ, <https://www.cia.gov/library/publications/the-world-factbook/geos/iz.html> (last visited June 2, 2009) [hereinafter *CIA World Factbook*]; see also Library of Congress Country

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ethnicities.⁴⁴ 97% of Iraqis are Muslim, and the remaining 3% are Christians, Yazidis, Jews, or other religions.⁴⁵ Most of the political parties' memberships are homogeneous; however, there are parties, such as the Communist Party of Iraq and the National Foundation Congress, whose members represent multiple religions and ethnicities.⁴⁶

Though constituting the majority of the Iraqi population, historically, Shi'ites have been underrepresented in Iraqi politics.⁴⁷ In the nineteenth century, during Ottoman rule, Sunni Ottomans placed Sunni Arabs in governmental positions in Iraq.⁴⁸ This practice was continued through British policies in the early twentieth century and under Saddam Hussein's control of Iraq.⁴⁹ After the fall of Saddam Hussein's regime, however, Shi'ites gained a majority of the positions of power in the new Iraqi government through democratic elections.⁵⁰

There are multiple Shi'ite political blocs in Iraq.⁵¹ Because each of these political parties possesses different goals pertaining to the future of Iraq, each party must be accommodated at the negotiations. Three Shi'ite blocs have the most influence⁵² and should, therefore, be guaranteed access to the negotiations. The Supreme Islamic Iraqi Council (SIIC), formerly known as

Studies, [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+iq0005\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+iq0005)) (last visited June 2, 2009).

⁴⁴ *CIA World Factbook-Iraq*, *supra* note 43.

⁴⁵ *Id.*; GlobalSecurity.Org, *Religious Structures*, <http://www.globalsecurity.org/military/world/iraq/religion.htm> (last visited June 2, 2009) [hereinafter *GlobalSecurity, Religious Structures*].

⁴⁶ The Iraqi Communist Party, <http://www.iraqcp.org/frames1/index.htm> (last visited June 2, 2009); Comrade Mudarisov, *A History of the Iraqi Communist Party 1934-1963: Part 2*, Feb. 22, 2004, <http://www.soviet-empire.com/ussr/viewtopic.php?t=28572> (last visited June 2, 2009).

⁴⁷ *See* GlobalSecurity.Org, *Shias in Iraq*, <http://www.globalsecurity.org/military/world/iraq/religion-shia1.htm> (last visited June 2, 2009); *see also* Abu Khaleel, *A Glimpse of Iraq: Sunni Shiite Iraq*, Feb. 18, 2005, <http://glimpseofiraq.blogspot.com/2005/02/sunni-shiite-iraq.html> (last visited June 2, 2009).

⁴⁸ GlobalSecurity.Org, *Religious Structures*, *supra* note 45.

⁴⁹ *Id.*

⁵⁰ PHEBE MARR, WHO ARE IRAQ'S NEW LEADERS? WHAT DO THEY WANT?, U. S. INST. OF PEACE, Mar. 2006, *available at* <http://origin.usip.org/pubs/specialreports/sr160.html>

⁵¹ *See CIA World Factbook-Iraq*, *supra* note 43 (listing all the political parties in Iraq).

⁵² *See Fast Facts: Iraqi Political Parties*, FOX NEWS, Jan. 28, 2005, <http://www.foxnews.com/story/0,2933,145666,00.html> (last visited June 2, 2009); *see also* Khaleel, *supra* note 47.

the Supreme Council for the Islamic Revolution in Iraq, is led by Abdal Aziz al Hakim.⁵³ The Islamic Dawa Party, a historically militant group and current political group, is led by Nouri al-Maliki, Iraq's Prime Minister.⁵⁴ These two parties have joined to form the United Iraqi Alliance.⁵⁵ The Badr Brigade, the militant wing of the SIIC, operates mainly in southern Iraq.⁵⁶ The Sadrist Movement, led by Shi'ite cleric Moqtada al-Sadr, is the political wing of the Mahdi army militia.⁵⁷ Political struggle exists between these groups, and at times, Shi'ite "militias are openly warring with each other across southern Iraq."⁵⁸ There is some concern that, as sectarian violence wanes, a battle may develop between these Shi'ite blocs for control of southern Iraq, but for the time being, there is a truce.⁵⁹

Kurdish groups, an ethnic minority in Iraq,⁶⁰ must have a voice in negotiations for national reconciliation. Most Kurdish Iraqis are Sunni and predominantly live in northern Iraq.⁶¹ Kurds have operated under the constitution of the Iraqi Kurdistan Region since the mid-1990s and have established a functional Kurdish regional government.⁶² There are two main Kurdish Political parties: Kurdistan Democratic Party, led by Massoud

⁵³ See *Shiite Politics in Iraq: The Role of the Supreme Council*, INT'L CRISIS GROUP, Nov. 15, 2007.

⁵⁴ The Islamic Dawa Party, <http://www.islamicdawaparty.com/> (follow link to "Read more about the Party") (last visited June 2, 2009).

⁵⁵ Anthony Shadid & Karl Vick, *Candidate Slate Shows Shiite Closing Ranks*, WASH. POST, Dec. 7, 2004, at A20, available at <http://www.washingtonpost.com/ac2/wp-dyn/A41286-2004Dec6?language=printer>.

⁵⁶ See *All Things Considered: Profile: Opposition Group Claiming to Represent Iraqi Shias Enters Northern Iraq* (NPR radio broadcast Mar. 10, 2003), available at <http://www.npr.org/programs/atc/transcripts/2003/mar/030310.watson.html>; see also Lionel Beehner, *Iraq's Militia Groups*, COUNCIL ON FOREIGN RELATIONS, Oct. 26, 2006, available at http://www.cfr.org/publication/11824/iraqs_militia_groups.html.

⁵⁷ See *Iraq's Muqtada Al-Sadr: Spoiler or Stabiliser?* INT'L CRISIS GROUP, July 11, 2006; see also Patrick Jackson, *Who are Iraq's Mehdi Army?* BBC NEWS, May 30, 2007, http://news.bbc.co.uk/1/hi/world/middle_east/3604393.stm (last visited June 2, 2009).

⁵⁸ Jonathan Finer, Book Note, 32 YALE J. INT'L L. 272, 274 (2007) (reviewing GALBRAITH, *supra* note 7).

⁵⁹ Charles Crain, *Waiting for a Shi'ite Civil War*, TIME, Nov. 13, 2007, available at <http://www.time.com/time/world/article/0,8599,1683561,00.html>.

⁶⁰ See *CIA World Factbook-Iraq*, *supra* note 43.

⁶¹ Kurdistan – The Other Iraq, <http://www.theotheriraq.com/index.html> (last visited June 2, 2009) (providing a link to download a fact sheet on Iraqi-Kurdistan).

⁶² Public International Law & Policy Group & The Century Foundation, *Establishing a Stable Democratic Constitutional Structure in Iraq: Some Basic Considerations*, 39 NEW ENG. L. REV. 53, 57 (2003).

Barzani, and the Patriotic Union of Kurdistan led by Jalal Talabani.⁶³ While these two parties have aligned as part of the Democratic Patriotic Alliance of Kurdistan,⁶⁴ violent conflicts have erupted between the parties in the years since U.S. occupation.⁶⁵ In the de facto independent area of Kurdistan, the Pesh Merga is a military force independent of the Iraqi government.⁶⁶ In addition, the Kurdistan Workers Party, a militant group, operates in Northern Iraq.⁶⁷ Their objective is to create a socialist Kurdistan composed of Northern Iraq, and parts of Syria, Turkey, and Iran.⁶⁸ Consequently, the Kurdistan Workers Party does not have interest in a united democratic Iraq.⁶⁹

Sunni Arab Iraqis held a majority of the Ba'ath political positions prior to the United States' invasion.⁷⁰ Most Arab Sunnis live in central Iraq in an area known as the Sunni triangle.⁷¹ Urban Arab Sunnis, many former Ba'athists, tend to be more educated and secular;⁷² whereas rural Arab Sunnis often are less educated and more focused on family, clan, tribal, or

⁶³ Patriotic Union of Kurdistan, <http://www.puk.org/web/htm/about/talab.html> (last visited June 2, 2009) (providing a biography of Jalal Talabani, President of Iraq); see also Kurdistan – The Other Iraq, *supra* note 61.

⁶⁴ See Jalal Ghazi, *Palestinian Lessons for Kurdish Independence*, NEW AMERICA MEDIA, Dec. 5, 2007, available at http://news.newamericamedia.org/news/view_article.html?article_id=9ed939373c334310d2d52902c2868bcc (discussing the strategic move to align the two parties for Iraqi national elections).

⁶⁵ See *Finer*, *supra* note 58, at 274.

⁶⁶ *Kennedy*, *supra* note 3, at 671.

⁶⁷ Kurdistan Workers' Party, Federation of American Scientists, May 21, 2004, <http://www.fas.org/irp/world/para/pkk.htm> (last visited June 2, 2009).

⁶⁸ See GlobalSecurity.Org, *Kurdistan Worker's Party*, <http://www.globalsecurity.org/military/world/para/pkk.htm> (last visited June 2, 2009) [hereinafter *GlobalSecurity PKK*]; see also Greg Bruno, *Inside the Kurdistan Workers Party (PKK)*, COUNCIL ON FOREIGN RELATIONS, Oct. 19, 2007, available at <http://www.cfr.org/publication/14576/>.

⁶⁹ See Kurdistan Workers' Party, *supra* note 67; see also *GlobalSecurity PKK*, *supra* note 68.

⁷⁰ Hamza Hendawi, *Sunni-Arab Minority Faces Dilemma After Saddam's Fall*, OAKLAND TRIB., Jan. 25, 2004, available at http://findarticles.com/p/articles/mi_qn4176/is_20040125/ai_n9722104 (stating that "Sunni prestige peaked at the time of Saddam's 23-year rule.").

⁷¹ Sharon Otterman, *Iraq: The Sunnis*, COUNCIL ON FOREIGN RELATIONS, Dec. 12, 2003, available at <http://www.cfr.org/publication/7678/#2>.

⁷² Lionel Beehner, *Iraq's Sunni Arabs*, COUNCIL ON FOREIGN RELATIONS, Oct. 14, 2005, available at http://www.cfr.org/publication/9027/iraqs_sunni_arabs.html [hereinafter *Beehner, Iraq's Sunni Arabs*].

regional interests.⁷³ The main Sunni political party is the Iraqi Islamic Party, but Sunni leadership is more fractured, and tribal leaders maintain significant political clout.⁷⁴ Some former Ba'athist Sunnis support restoring a strong, centralized state through insurgency.⁷⁵ As a result, some Iraqi Sunnis have aligned with foreign fighters of Al-Qaeda in Iraq (AQI) and other insurgent organizations.⁷⁶ AQI not only opposes U.S. presence in Iraq but also Shi'ite leadership.⁷⁷ AQI's attacks on Iraqi citizens have since severed some of their relationships with Sunni Iraqis.⁷⁸ Sunni tribal leaders have both worked with, and clashed with, the former Ba'athist insurgency and AQI;⁷⁹ however, even with all these divisions, most Arab Sunni Iraqis continue to support maintaining a unified Iraq.⁸⁰

Politically, Iraq is not only divided on ethnic and religious lines, but conflict persists within the Sunni, Shi'ite, and Kurdish blocs.⁸¹ Nonetheless, a majority of Iraqis want a unified Iraq with a central government in Baghdad.⁸² Almost half of the Iraqi population believes security is the

⁷³ *Id.* (quoting Judith Yaphe, a senior fellow at the National Defense University, stating that "Tribal politics is the overwhelming interest" for rural Sunnis).

⁷⁴ *Id.*

⁷⁵ See Lionel Beehner, *IRAQ: Insurgency Goals*, COUNCIL ON FOREIGN RELATIONS, May 20, 2005, available at <http://www.cfr.org/publication.html?id=8117>; see also Hiwa Osman, *What do the Insurgents Want? Different Visions, Same Bloody Tactics*, WASH. POST, May 8, 2005, at B1.

⁷⁶ See generally Osman, *supra* note 75, at B1 (referring to fighters for Abu Musab Zarqawi who was AQI's leader).

⁷⁷ Karen DeYoung & Walter Pincus, *Al-Qaeda in Iraq May Not Be Threat Here: Intelligence Experts Say Group is Busy on Its Home Front*, WASH. POST, Mar. 18, 2007, at A20. (discussing AQI's dual objectives, but stating that its focus is fighting against Shi'ite leadership).

⁷⁸ See Peter Beaumont, *Iraqi Tribes Launch Battle to Drive Al-Qaida out of Troubled Province*, THE GUARDIAN, Oct. 3, 2006, available at <http://www.guardian.co.uk/world/2006/oct/03/alqaida.iraq>; see also Jim Muir, *US Pits Iraqi Sunnis Against Al-Qaeda*, BBC NEWS, June 11, 2007, http://news.bbc.co.uk/2/hi/middle_east/6740683.stm (last visited June 2, 2009).

⁷⁹ See Finer, *supra* note 58, at 272; see also Khaled Ali Beydoun, Comment, *Dar Al-Islam Meets "Islam as Civilization": An Alignment of Politico-Theoretical Fundamentalisms and the Geopolitical Realism of this Worldview*, 4 UCLA J. ISLAMIC & NEAR E.L. 143, 154-56 (2004-2005) (discussing jihad and different jihadist movements); see also *Internal Violence Splits Iraqi Insurgents*, NEWSMAX.COM, Nov. 12, 2005, <http://archive.newsmax.com/archives/ic/2005/11/12/115318.shtml> (last visited June 2, 2009).

⁸⁰ Beehner, *Iraq's Sunni Arabs*, *supra* note 72.

⁸¹ See *supra* notes 43-69.

⁸² *Iraq Poll 2007*, BBC & ABC News, Question 14, available at http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/19_03_07_iraqpollnew.pdf.

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biggest problem facing their lives in Iraq today,⁸³ and, therefore, most Iraqis probably desire negotiations between political groups and militias that would result in peace and stability within the country.

B. Any Negotiations Targeting National Reconciliation Should Allow All Interested Parties to Participate

Peace does not require a homogenous citizenship or a single mindset.⁸⁴ In the mid-1990s until the decommissioning of the Irish Republican Army in 2005, Northern Ireland worked through its own peace process with a religiously and politically divided Ulster.⁸⁵ Similar to Iraq, not only were the political parties that participated in Northern Ireland's Peace Process divided between Protestants and Catholics, but subdivisions of the religious groups and other minorities were also represented in the negotiations.⁸⁶ Essential to the Northern Ireland peace process was the understanding that all interested political parties that agreed to the Mitchell Principles⁸⁷ were permitted to partake in the negotiations.⁸⁸

Any peace process that develops through negotiations called for in the Helsinki Agreement should allow all interested parties to participate—that

⁸³ *Id.* at Question 4.

⁸⁴ While the Northern Ireland peace process has been the focus of this note, diverse citizenship in South Africa and Bosnia have also worked through peace processes. For insight into these peace processes, see KRISTINA A. BENTLEY & ROGER SOUTHALL, *AN AFRICAN PEACE PROCESS: MANDELA, SOUTH AFRICA AND BURUNDI* (2005). See also Derek Chollet & Bennett Freeman, *The Secret History of Dayton: U.S. Diplomacy and the Bosnian Peace Process 1995*, The National Security Archive, Nov. 21, 2005, available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB171/index.htm> (providing a discussion of the Bosnian Peace Process).

⁸⁵ Ulster is the region where six Northern counties of Ireland were disputed since the partition of Ireland in 1920. IrelandWide.com, *Ireland by Region: Ulster*, <http://www.irelandwide.com/regional/ulster/index.htm> (last visited June 2, 2009).

⁸⁶ See MITCHELL, *Making Peace*, *supra* note 22, at 23–45 (discussing the parties in the Northern Ireland peace process. The process included representatives from the British and Irish governments, but also included Social Democratic and Labour Party (SDLP), the Ulster Unionist Party (UUP), the Democratic Unionist Party (DUP), the Ulster Democratic Party (UDP), United Kingdom Unionist Party (UKUP), Sinn Féin (the political wing of the IRA), and the Northern Ireland Women's Coalition (NIW). Most of these political parties were associated with paramilitaries loosely connected to the political party, while there were other paramilitaries that separated from the political parties and remained autonomous).

⁸⁷ The parties had to agree to democracy and a peaceful process without the use of violence or the threat of violence. *Id.* at 53.

⁸⁸ *Id.*

are Iraqi and agree to partake in a peaceful process.⁸⁹ Unless all interested parties in this complex society are allowed to voice their concerns, then the process will not be optimal.⁹⁰ Negotiations between some groups will provide benefits, but to a lesser degree than if all interested parties participated. For instance, a party that would have agreed to partake in the negotiations, but was not included, may resort to violence to achieve its goals, and overall peace within Iraq will not be achieved. Of course, a small number of outsiders may have “radical” views that contradict a peaceful process,⁹¹ but since the majority of Iraqis want a peaceful democratic society,⁹² those minority voices will become isolated and easier to identify and silence.⁹³

⁸⁹ This was the approach that Senator Mitchell used in Northern Ireland. In addition, this is the approach called for in the eighth recommendation of the Helsinki Agreement: “To ensure the full participation of all Iraqi parties and blocs in the political process and agreed governance arrangements.” The Helsinki Agreement’s fifth political objectives states that there should be “[a]n emphasis on the continuation of constructive dialogue between different political groups aiming to fulfill national goals,” and the eighth political objective states that parties should be “Working towards correcting the misunderstanding that accompanied the political process and encourage all Iraqi political parties to participate in building Iraq in all aspects.” Crisis Management Initiative, *supra* note 27.

⁹⁰ This is one of the reasons the sixth political objective of the Helsinki Agreement orders those already involved “To convince political groups that are currently outside the political process to initiate and activate a constructive dialogue to reach common understandings.” *Id.*; see also DARBY, *supra* note 10, at 119 (stating “[I]t is necessary to apply a principle of ‘sufficient inclusion’ in relation to militant organizations. That is to say, a peace process should include all actors who represent a significant proportion of their community, as well as all actors who have the ability to destroy an agreement.”); Symposium, *Whither the Peace Process?* 70 TEMP. L. REV. 237, 266 (1997) (Professor Saeb Erakat stated that “As far as the negotiations are concerned, who said that any party can’t come to the table? Of course anyone can come to the table and present whatever they want to present. But, in order to speak [in] that peace process, you need to have engagement in the peace process.”).

⁹¹ Stephen John Stedman, *Spoiler Problems in Peace Processes*, 22 INT’L SECURITY 5, 9–11 (1997) (discussing the role of “spoilers” in peace processes. He discusses the difference between “total spoilers” and “limited spoilers.” According to Stedman, both of these “spoilers” probably will act against the peace process.).

⁹² *Iraq Poll 2007*, *supra* note 82, at Questions 4, 7, 9, 14.

⁹³ In Northern Ireland, within days of the Good Friday Agreement, the few dissident groups announced cessation of violence. MITCHELL, *Making Peace*, *supra* note 22, at 184; see also DARBY, *supra* note 10, at 119–20, 266 (discussing how to handle those that are marginalized during the peace process and either act as “Mavericks” or “ideological Zealots,” and stating that “The more numerous and compromising the moderates, the greater the likelihood that the extremes can be marginalized.”).

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Other scholars may advocate against fully inclusive negotiations for national reconciliation, arguing that the negotiations should only include the most powerful parties in Iraq. The basic premise behind this approach is that if the major parties in Iraq come to agreement, then those minor parties on the outside will be influenced to join the agreement. In addition, negotiations including a smaller number of participants will probably have less complexity.⁹⁴ While this approach has advantages, any negotiations that are not fully inclusive will not address all the issues permeating Iraqi society. In addition, negotiations that only include a few parties may cause minorities to feel that they have been neglected, causing them to rebel against the agreement; thus true national reconciliation will not be achieved. Further, this approach would be contrary to the eighth recommendation of the Helsinki Agreement: "To ensure the full participation of all Iraqi parties and blocs in the political process and agreed governance arrangements."⁹⁵

An all-inclusive approach should even include the opportunity for participants that may not support democracy but do support peaceful solutions for Iraqi governance.⁹⁶ Many former Ba'athist members are against democracy in all forms and want Shura (consultative) representation.⁹⁷ Invitation to peace negotiations will allow these participants to express their views and may influence settlement. Negotiations often involve compromise,⁹⁸ and participation may provide stepping stones for groups opposing democracy to begin to comprehend and accept the ideals of freedom, justice, and equality that democracy brings.⁹⁹ People and groups

⁹⁴ JEFFREY Z. RUBIN & BERT R. BROWN, *THE SOCIAL PSYCHOLOGY OF BARGAINING AND NEGOTIATION* 64 (1975).

⁹⁵ Crisis Management Initiative, *supra* note 27.

⁹⁶ Although this is counterintuitive to the first and twelfth recommendation of the Helsinki Agreement, the following argument will explain why inclusion, and at least the opportunity to participate and reject, is important to actually achieve democracy. See generally ANTHONY H. BIRCH, *THE CONCEPTS AND THEORIES OF MODERN DEMOCRACY*, 105–06 (2d ed. 2001) (discussing the importance of increased participation in democracy).

⁹⁷ Hamoudi, *supra* note 38, at 1319–20.

⁹⁸ See Robert J. Condlin, *Bargaining in the Dark: The Normative Incoherence of Lawyer Dispute Bargaining Role*, 51 MD. L. REV. 1, 23–31 (1992) (discussing principled bargaining theory and how compromise can be used for a win-win result).

⁹⁹ Partaking in a democratic process will allow parties to experience the basic tenets of democracy. As they see democracy function on a small scale, perhaps these leaders will develop a better understanding of how democracy applies on a larger scale. See LUC REYCHLER, *DEMOCRATIC PEACE-BUILDING AND CONFLICT PREVENTION: THE DEVIL IS IN THE TRANSITION* 141–43 (1999); see also Tom Christiano, *Democracy*, Stanford Encyclopedia of Philosophy, July 27, 2006, available at

may transform through the process.¹⁰⁰ In Northern Ireland, many prisoners who had been sentenced for violent acts—often against political or religious rivals—became some of the most ferocious advocates for the peace process.¹⁰¹

Historical and economic factors also influence and support the need for an all-party negotiation. The Iraqi Constitution states “that the oil and gas¹⁰² are owned by the Iraqi people and equally shared by all Iraqi individuals, regardless of the place of extraction and production.”¹⁰³ The Constitution, therefore, provides that the largest economic asset of the Iraqi people entwines all the political groups, ethnicities, and religions.¹⁰⁴ This provision, therefore, establishes a common ground for groups entering the peace process, and maintenance of this universal interest supports the need for all-party discussions.

In addition, historical examples, including the process that led to the Helsinki Agreement, indicate Iraqi Shi’ites and Sunnis can successfully work together.¹⁰⁵ During the Iraq-Iranian War, Shi’ite Iraqis fought alongside Sunni Iraqis against Iranians, predominately Shi’ites, in support of Iraq.¹⁰⁶

<http://plato.stanford.edu/entries/democracy/> (describing democracy and its effect on liberty, equality, and public justification).

¹⁰⁰ See generally Donna Maeda, Note, *Agencies of Filipina Migrants in Globalized Economies: Transforming International Human Rights Legal Discourse*, 13 BERKELEY LA RAZA L.J. 317, 341 (2002) (discussing immigrant labor negotiations with the power structure).

¹⁰¹ See MITCHELL, *Making Peace*, *supra* note 22, at 185–86.

¹⁰² Traditionally, the oil sector has provided about 95% of Iraq’s foreign exchange earning. *CIA World Factbook-Iraq*, *supra* note 43.

¹⁰³ Hamoudi, *supra* note 38, at 1317; IRAQI CONST. § 4, art. 111–112, available at http://www.uniraq.org/documents/iraqi_constitution.pdf.

¹⁰⁴ E. Anthony Wayne, *Economic and Financial Reconstruction in Iraq: Hearing Before Senate Banking Subcommittee on International Trade and Finance*, at 4, Feb. 11, 2004, available at <http://merln.ndu.edu/MERLN/PFIraq/archive/state/29288.pdf>. (stating that the oil “sector is important because production from Iraq’s oil wealth provides about 95% of the country’s export revenues and 95% of its government revenues.”).

¹⁰⁵ Mu Xuequan, *Iraq Talks See U.S. Forces as Impediment to Peace*, XINHUA NEWS, Sept. 6, 2007, available at http://news.xinhuanet.com/english/2007-09/06/content_6668624.htm (indicating that Shi’ite and Sunni leaders worked together to draft the Helsinki Agreement).

¹⁰⁶ GlobalSecurity.Org, *Shia-Sunni Relations*, <http://www.globalsecurity.org/military/world/iraq/religion-shia-sunni.htm> (last visited June 2, 2000) (stating “Nonetheless, the theory of sectarian strife was undercut by the behavior of Iraq’s Shia community during Iran’s 1982 invasion and the fighting thereafter. Although about three-quarters of the lower ranks of the army were Shias, as of early 1988, no general insurrection of Iraqi Shias had occurred.”); see also Alexander Zavis, *Iraqi Sunnis and Shiites Work Together, Distrustfully*, L.A. TIMES, Feb. 22, 2008,

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These historical events demonstrate that conflicting voices and interests have previously aligned for the benefit of themselves and the Iraqi people.

Even though the negotiations should allow all parties to participate, realistically, achievement of universal agreement on each issue will rarely occur. Therefore, a process must be established that allows for closure of issues without universal consensus. Previous peace processes with multiple parties represented, including South Africa and Northern Ireland, utilized “sufficient consensus” to arrive at agreements.¹⁰⁷ In both South Africa, a negotiation involving twenty-six parties, and Northern Ireland, sufficient consensus was used to “maintain a spirit of inclusiveness while avoiding the strictures of unanimity.”¹⁰⁸ If a majority of representatives of each tradition or faction support a proposition, even though one or more parties do not, then the proposition has reached sufficient consensus.¹⁰⁹ While each process established different rules to define “sufficient consensus,” this process allowed all interested parties to participate while empowering the major-moderate parties in the negotiations.¹¹⁰ Advocating for all-party negotiations comes with the proviso that a mechanism such as “sufficient consensus” will be necessary in Iraqi negotiations for national reconciliation.

The Helsinki Agreement calls for negotiations to reach national reconciliation through non-violence and democracy,¹¹¹ which, therefore, must allow all interested Iraqi parties to participate in order to be fully effective. While negotiations between a smaller number of political groups may lead to partial success, democratic ideals require full participation and all voices to be heard.¹¹² Although a universal consensus may not be possible to conclude a multi-party negotiation, tactics such as “sufficient consensus”

available at <http://articles.latimes.com/2008/feb/22/world/fg-rivalry22> (discussing Shi’ite and Sunni forces fighting together alongside U.S. forces against insurgents).

¹⁰⁷ Robert H. Mnookin, *Strategic Barriers to Dispute Resolution: A Comparison of Bilateral and Multilateral Negotiations*, 8 HARV. NEGOT. L. REV. 1, 18–19 (2003).

¹⁰⁸ *Id.* at 19.

¹⁰⁹ Conciliation Resources, Northern Ireland: Glossary, <http://www.c-r.org/our-work/accord/northern-ireland/glossary.php> (last visited June 2, 2009) (providing terms used in Northern Ireland and stating that “sufficient consensus” is reached “if a majority of representatives of each tradition or faction support it even though one or more parties do not.”).

¹¹⁰ See Mnookin, *supra* note 107, at 21–23.

¹¹¹ In fact, this is the first recommendation of the Helsinki Agreement. Crisis Management Initiative, *supra* note 27.

¹¹² See generally Theodore Parker, Speech at N.E. Anti-Slavery Convention: The American Idea (May 29, 1850), available at <http://www.bartleby.com/100/459.html> (stating the oft quoted phrase “A democracy—that is a government of all the people, by all the people, for all the people. . .”).

will allow many parties to participate in reaching a final agreement.¹¹³ Historical examples of multi-party political negotiations demonstrate the effectiveness of agreements reached through all-party negotiations and the ability to silence radical thoughts that strain the negotiations.¹¹⁴ As Iraqi leaders negotiate national reconciliation in the future, every effort should take place to make the negotiations fully inclusive to all parties willing to seek national reconciliation through peaceful actions.

C. Ramifications of Allowing Previously Violent Parties to Participate

Negotiations aimed to reach national reconciliation between all interested parties in Iraq will inevitably include parties that have employed violent tactics in the past, both before and following the U.S. invasion of Iraq.¹¹⁵ Many of the political parties in Iraq are linked to, or evolved from, militias,¹¹⁶ and allowing these parties that have used force in the past to participate in negotiations may have ramifications. Negotiations will, therefore, involve participants with the greatest ability to end violence, a transition from violence to the political process may occur, and groups possessing the most significant ethnic suspicion and mistrust may develop effective mechanisms to overcome their suspicions.¹¹⁷ On the other hand,

¹¹³ The fourth recommendation of the Helsinki Agreement states that "All parties will commit to accept the results of the negotiations and no party can be subject to a threat of force from any groups that reject all or part of any agreement reached." Crisis Management Initiative, *supra* note 27.

¹¹⁴ See *supra* note 17 (discussing Northern Ireland); HUGH MAILL ET AL., CONTEMPORARY CONFLICT RESOLUTION 174 (2d ed. 2005) (stating that "In successful peace processes, the moderate parties come to defend the emerging agreement, and the spoilers can even serve to consolidate a consensus in the middle ground."); see generally CHRISTINE BELL, PEACE AGREEMENTS AND HUMAN RIGHTS 37-119 (2000) (discussing peace processes in South Africa, Northern Ireland, Israel, Palestine, and Bosnia); FEN OSLER HAMPSON, NURTURING PEACE: WHY PEACE SETTLEMENTS SUCCEED OR FAIL (1996) (providing examples from peace processes in Cyprus, Namibia, Angola, El Salvador, and Cambodia).

¹¹⁵ The seventh political objective of the Helsinki Agreement advocates for leaders "To deal with armed groups which are not classified as terrorist, encouraging them to use peaceful political means to address the conflict and to provide their members with jobs and opportunities within state administrations." Crisis Management Initiative, *supra* note 27.

¹¹⁶ See *supra* Part III.A.

¹¹⁷ See, e.g., Andrew Kydd, *Overcoming Mistrust*, 12 RATIONALITY & SOC'Y 397, 398-412 (2000) (discussing how trust can be built through strategic interaction. The author argues that trust needs to be built through small, initial, cooperative gestures. He

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allowing previously violent groups into negotiations may validate prior violent actions. If negotiations reach an impasse, and national reconciliation is not achieved, this may aggravate tensions and escalate violence.¹¹⁸

If the negotiations include parties that have previously used violent tactics and possess weapons, then those parties are naturally in the greatest position to end violence. Either the militias or the political parties linked to them may decommission the militias. In addition, many of these groups represent large percentages of the Iraqi population,¹¹⁹ and in order for negotiations for national reconciliation to achieve significant results, these groups must be represented. In Northern Ireland, Sinn Féin,¹²⁰ the political wing of the Irish Republican Army,¹²¹ one of the more violent paramilitaries operating in Ireland and Britain—did not participate in the beginning of the negotiations that led to the Good Friday Agreement.¹²² However, Senator Mitchell, the Chairman of the Northern Ireland Peace Process, felt that because the process was not fully inclusive, it could not lead to a lasting agreement until Sinn Féin joined the discussions.¹²³ Allowing Sinn Féin into the discussions was one of the major stepping stones to the eventual decommissioning of the Irish Republican Army in 2005, which had been a major hurdle to lasting peace in Northern Ireland.¹²⁴ Thus, inclusion of a political party linked to a violent paramilitary allowed the party to transition from violent actions to the political process.¹²⁵ This example illustrates the

then shows how interactions are used to overcome mistrust and facilitate cooperation in a social dilemma game).

¹¹⁸ See Uppsala Universitet, Department of Peace and Conflict Research: Conflict Database, <http://www.pcr.uu.se/database/conflictSummary.php?bcID=227> (last visited June 2, 2009) (arguing that many believe Fatah returned to violence in Palestine as a consequence of failed negotiations with Israel); see also Leo F. Smyth, *International Mediation and Capitulation to the Routine*, 108 PENN ST. L. REV. 235, 262 (2003) (discussing the fear amongst the public and leaders in Northern Ireland that if negotiations did not succeed, parties would return to violence in Northern Ireland).

¹¹⁹ See *supra* Part III.A.

¹²⁰ Sinn Féin was the second most supported political party by Nationalists in Northern Ireland behind the SDLP. MITCHELL, *Making Peace*, *supra* note 22, at 17, 29.

¹²¹ Sinn Féin has never stated this, but it is generally accepted as the truth in Northern Ireland. MITCHELL, *Making Peace*, *supra* note 22, at 23.

¹²² See *id.* at 110 (discussing Sinn Féin's entrance into the talks in July 1997 and the other parties' reactions).

¹²³ *Id.* at 103–05, 114 (arguing that as parties entered, “the prospects for the future were better”).

¹²⁴ *Id.* at 114; see also Connolly, *supra*, note 19, at 418–19.

¹²⁵ Currently Sinn Féin holds 26.2 % of the seats in the Northern Ireland Assembly and has become the strongest nationalist political party in Northern Ireland. Ireland

importance and practical necessity of allowing parties with violent pasts to partake in the peace process and supports the argument that Iraqi negotiations for national reconciliation must allow all interested parties to be involved.

Another significant aspect of allowing previously violent groups to participate in negotiations is that some of them possess significant ethnic suspicion and mistrust of others within the country.¹²⁶ Involvement in the negotiations will facilitate understanding. Violent conflict generates hatred and makes it virtually impossible for communities to trust each other.¹²⁷ Therefore, negotiations are valuable in aiding parties' establishment and restoration of relationships.¹²⁸ By focusing on the specific parties' values and interests, rather than abstract ideologies, dispute resolution processes help parties understand one another's needs and values and generate solutions that compromise the parties' varied interests.¹²⁹ This process relies on the development of trust.¹³⁰ Becoming involved in negotiations aimed towards national reconciliation requires that parties begin to trust and understand each

Information Guide, http://www.irelandinformationguide.com/Sinn_F%E9in (last visited June 2, 2009).

¹²⁶ Ghosh, *supra* note 3 (stating "The roots of the sectarian divide lie in a schism that arose shortly after the death of the Prophet Muhammad in the 7th century."); Mike Shuster, *The Origins of the Shia-Sunni Split*, NPR, Feb. 12, 2007 <http://www.npr.org/templates/story/story.php?storyId=7332087> (last visited June 2, 2009) (stating that "The violence and war [in the 7th century] split the small community of Muslims into two branches that would never reunite." And continuing, "There were periods of conflict and periods of peace. But the split remained and would, in the second half of the 20th century, turn out to be one of the most important factors in the upheavals that have ravaged the Middle East.").

¹²⁷ George Mitchell stated:

At the heart of all of the problems in Northern Ireland is mistrust Each disbelieves the other. Each assumes the worst about the other. If there is ever to be durable peace and genuine reconciliation, what is really needed is the decommissioning of mind-sets in Northern Ireland. That means that trust and confidence must be built, over time, by actions in all parts of society.

MITCHELL, *Making Peace*, *supra* note 22, at 37. For a discussion of violence in Iraq, see *supra* Part III.A.

¹²⁸ See, e.g., Lon L. Fuller, *Mediation—Its Forms and Functions*, 44 S. CAL. L. REV. 305, 325 (1971). For a more contemporary piece, see also John Paul Lederach, *Exploring the Depths of Mediation: Some Discoveries*, 16 CONFLICT RESOL. NOTES 32 (1999) (discussing mediations—since the Helsinki Agreement calls for negotiations that can only be achieved if parties come to agreement—these negotiations will be similar to mediations).

¹²⁹ Seamus Dunn & Jacqueline Nolan-Haley, *Conflict in Northern Ireland After the Good Friday Agreement*, 22 FORDHAM INT'L L.J. 1372, 1379–80 (1999).

¹³⁰ *Id.* at 1379.

other's interests by entering and partaking in the process.¹³¹ Unfortunately, for some groups this may be difficult or contrary to their ideologies, and withdrawal from the process may occur.¹³² At least this process will give moderate voices the opportunity to understand the outlying views.

The ramifications outlined above for allowing previously violent parties to participate in the process are positive; yet, some parties in the Northern Ireland peace process argued that negative consequences resulted from allowing Sinn Féin to participate. These critics asserted that granting Sinn Féin a seat at the table legitimized a historically violent party's previous actions and was contrary to democracy.¹³³ In addition, negotiations may be led in undesirable directions due to fear of consequences from the violent party at the table.¹³⁴ Further, if negotiations reach an impasse, a consequence

¹³¹ Gary Friedman & Jack Himmelstein, *Resolving Conflict Together: The Understanding-Based Model of Mediation*, 2006 J. DISP. RESOL. 523, 524–36 (2006) (discussing the effectiveness of an understanding-based model of mediation and the importance of a party-oriented approach).

¹³² See MITCHELL, *Making Peace*, *supra* note 22, at 108–11 (discussing the withdrawal and effects of the withdrawal of the UKUP and DUP in Northern Ireland upon Sinn Féin's entry).

¹³³ Dr. Ian P. K. Paisley, leader of the DUP, which withdrew from the Northern Ireland peace process upon the Sinn Féin entrance, stated:

Responding to violence in this manner [allowing into negotiations] only pays political dividends to those who are violent. Those committed to democratic means, armed only with the power of the ballot box and the arguments for their case, cannot achieve any momentum for their cause if they enter into dialogue, negotiations, or dealings with those who use both politics and the bullet, bomb and balaclava.

Dr. Ian K. R. Paisley, MP, MEP, *Peace Agreement—Or Last Piece in a Sellout Agreement*, 22 FORDHAM INT'L L.J. 1273, 1279 (1999).

¹³⁴ Dr. Paisley argued that "the political atmosphere is so putrefied by [the IRA's] presence that the threat of violence is as potent as actual violence." *Id.* Dennis Kennedy, a lecturer in European Studies at Queen's University of Belfast, eruditely explained:

What had been a search for a political accommodation between the broad strands of nationalism and unionism became more a negotiation between militant nationalism and the British state. The imperative of ensuring that the cease-fire was maintained, or once broken, reinstated, dominated all other considerations, and threatened to move matters to the plane the IRA and Sinn Féin had always been seeking – that of a peace conference, an exercise in "conflict resolution" to end hostilities between two sides which had been pursuing their legitimate aims (legitimate in their own eyes) by force of arms The most damaging result of this, and the one precisely desired by Republicans, has been a post-facto legitimising of IRA terrorism. A small group long denounced by the Irish Government, moderate nationalists and many others, as ruthless and mindless terrorists who must be suppressed, are now dignified as essential interlocutors, without whom dialogue is not worth a penny candle

may be that violent parties resort to previous tactics with stronger aggression and mistrust.

These arguments against including previously violent parties fail to acknowledge that for peace processes to succeed, compromise and innovation must take place.¹³⁵ As with Northern Ireland, there has been violence in Iraq, and some of the groups that have acted violently in the past potentially possess the power to bring about national reconciliation. The pursuit of peace may require legitimizing violent groups; however, since the overall objective of the Helsinki Agreement is to achieve national reconciliation through peaceful means and democracy, this legitimization is minimized because these groups must compromise their tactics according to the principles of the Agreement.¹³⁶ Further, if these parties are not acknowledged or allowed into the discussion, they may continue their menacing behaviors and attempt to compromise the negotiations from the

....

No democrat can be happy with the large degree of appeasement of terrorism that underlies the Agreement. The pursuit of a settlement inclusive of people long denounced as terrorists with no place in civilized society was based on a belief that these terrorists could not be defeated. For almost a decade now, the new consensus has been to persuade the terrorists to move away from terrorism, to negotiate with them, to treat them with a measure of respect, almost as honorable, if mistaken enemies to be accommodated, not defeated. This is appeasement.

Dennis Kennedy, *Dash for Agreement: Temporary Accommodation or Lasting Settlement?* 22 FORDHAM INT'L L.J. 1440, 1456–59 (1999) (quoting Square Circles, The Cadogan Group: Round Tables and the Path to Peace in Northern Ireland §3 (1996), <http://www.cadogan.org/gpubs/square.html> (last visited June 2, 2009)).

¹³⁵ Brian D. Vaughan stated:

[T]he desperate degree of violence and bloodshed that Ulster has witnessed since the Troubles began in 1969 that claimed over 3,300 lives clearly calls for what some may seem as drastic action in an attempt to bring peace to the area . . . [T]he reformers and peacemakers in Northern Ireland believe that something innovative must be done to stem the tide of violence that has ravaged the country.

Vaughan, *supra* note 21, at 520.

¹³⁶ Cf. Kennedy, *supra* note 134, at 1459. Kennedy stated:

The pursuit of peace is the highest of goals. If it can be achieved, even with a measure of appeasement, then it is worthwhile . . . It still leaves the appalling truth that in the second half of the twentieth century a small subversive group ready to employ ruthless terror against the civilian population cannot be defeated in a democratic society where it commands only tiny minority support.

Id.

outside.¹³⁷ Every effort should be made to limit the number of parties attempting to alter the negotiations from the outside, and the best method to reach these ends is inclusion of previously violent parties.

D. Minority Voices Must be Allowed to Participate in the Negotiations

The preamble to the Iraqi Constitution grants “an equal opportunity for all”¹³⁸ by providing “a republican, federal, democratic, pluralistic system.”¹³⁹ Further, the Iraqi Constitution guarantees that all shall be free from discrimination based on “gender, race, ethnicity, nationality, origin, color, religion, sect, belief, or opinion.”¹⁴⁰ Specifically relating to gender, the Constitution attempts to affirm that Iraq will encourage and ensure gender equality.¹⁴¹ Nonetheless, since the U.S. invasion of Iraq, many minorities have not experienced the political guarantees they expected.¹⁴² “[T]he ability

¹³⁷ Mitchell, *Principles of Peace*, *supra* note 10, at 5 (stating that “A second need is for clear and determined policy not to yield to those willing to use violence. Over and over, they tried to destroy the peace process in Northern Ireland; at times they nearly succeeded.”).

¹³⁸ IRAQI CONST. pmbl., available at http://www.uniraq.org/documents/iraqi_constitution.pdf.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at art. 14.

¹⁴¹ Vanessa J. Jimenez explained that:

The Constitution . . . ensures that all Iraqis “are equal before the law without discrimination based on gender” (art. 14); guarantees that both male and female citizens have equal rights “to participate in public affairs and to enjoy political rights” (art. 20); prohibits domestic violence (art. 29); and provides for an electoral law that aims to achieve not less than 25 percent representation of women in the Council of Representatives (art. 47).

Vanessa J. Jimenez, *Iraq’s Constitutional Process: Challenges and the Road Ahead*, 13 HUM. RTS. BRIEF 21, 23 (2005).

¹⁴² See *Who is Kissing the Women of Basra*, MADRE, Jan. 9, 2008, <http://www.madre.org/index.php?s=4&news=71> (last visited June 2, 2009) (stating that “shifting the focus from culture to gender reveals a system of power that is nearly universal. Yanar Mohammed, the founder of OWFI [Organization of Women’s Freedom in Iraq], describes this year’s killings of women in Basra as a campaign ‘to restrain women into the domestic domain and end all female participation in the social and political scene.’”); see also Nadje Sadig Al-Ali, *Iraq’s Women Under Pressure*, LE MONDE DIPLOMATIQUE, May 2007, available at <http://mondediplo.com/2007/05/05iraqwomen> (documenting the change since the ouster of Sadaam Hussein’s regime). Additionally, National Public Radio’s *All Things Considered* has reported:

of Iraqi leaders to forge a peaceful future will depend on the manner in which the government ensures that the unique identities, values, and concerns of its diverse ethnic, religious, and national minorities are respected and given a voice in the governance of the country.”¹⁴³

Negotiations for national reconciliation must include representatives of gender, ethnic, and religious minorities. Opportunities to partake in negotiations will politically strengthen minorities internally.¹⁴⁴ They also may promote majoritarian understanding of minorities, and future power sharing amongst minorities and majorities, as the Iraqi government evolves.¹⁴⁵ In Northern Ireland, the Northern Ireland Women’s Coalition (“NIWC”) participated in negotiations that led to the Good Friday Agreement.¹⁴⁶ Senator Mitchell explained:

The women overcame a great deal of adversity. Early in the process [the NIWC] were not taken seriously in our peace talks and they were insulted in the Forum . . . [I]t took many months for their courage and commitment to earn the attention and respect of the other parties. In the final stages of the

Years of violence there have affected everyone, young and old, soldiers and civilians alike. But the lives of women have perhaps been affected the most. Their right to go and do what they wish has been dramatically restricted by the rise of Islamist parties and extremist groups. In the last six months human rights groups report that more than 100 women have been killed in the city of Basra alone. Their crime? Wearing make-up or what is considered Western clothing. And many who dare to defend them have also been attacked or killed.

All Things Considered: Iraqi Women Face Greater Danger, Fewer Rights (NPR radio broadcast, Jan. 29, 2008), available at <http://www.npr.org/templates/story/story.php?storyId=18518858>.

¹⁴³ Jimenez, *supra* note 141, at 22–23 (noting that the Iraqi Constitution met this objective through recognition of freedom of religion, the protection of various minority rights, and a federal system that allowed for local self-governance and the equitable distribution of natural resource revenues).

¹⁴⁴ See Kate Fearon & Monica McWilliams, *The Good Friday Agreement: A Triumph of Substance over Style*, 22 *FORDAM INT’L L.J.* 1250, 1255 (1999) (stating that in the wake of the ceasefires in Northern Ireland, “Several consultative conferences were convened, creating the space for women involved in these networks and groups to come together and to give voice to their aspirations for the community as a whole, and to try to find ways in which these aspirations could be impressed on decision-makers.”).

¹⁴⁵ See generally Christine Chinkin, *Gender, Human Rights, and Peace Agreements*, 18 *OHIO ST. J. ON DISP. RESOL.* 867, 871–73 (2003) (discussing the importance of including minorities, the benefits that develop due to including minorities—especially women—in peace processes, and the failures of previous processes. Chinkin highlights the fact that participation can change perceptions of other stakeholders).

¹⁴⁶ Fearon & McWilliams, *supra* note 144, at 1255–56 (detailing experiences of the NIWC in the negotiations and expresses their opinions regarding the ramifications of the NIWC in the future of Northern Ireland).

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negotiations they were serious, important participants, and were treated as such.¹⁴⁷

Ostensibly, if the NIWC had not been allowed to participate in the negotiations, many of the benefits Northern Irish women gained, by having other participants observe the NIWC's devotion and propositions, would never have come to fruition.¹⁴⁸ Although minority voices may not "win" under a "sufficient consensus" voting procedure, inclusion in the process should at least enhance other parties' understandings of their beliefs and commitment to peace.

Iraq is a very diverse nation.¹⁴⁹ National reconciliation relies on all groups having a voice represented at negotiations.¹⁵⁰ The impact of the NIWC in the Northern Ireland peace process indicates one such success stemming from minority participation. Groups such as the Iraqi Women Network,¹⁵¹ Kurdish leadership, Assyrian leadership, as well as many other minorities, must be allowed to participate. The Iraqi Women Network's organizational makeup, which already includes members from both Shi'ite and Sunni religious groups working together, may provide a stepping stone for overall national reconciliation.¹⁵² Participation by minority groups would allow them to solidify their own internal interests, but it would also encourage national reconciliation by allowing a more diverse group of voices to participate and contribute their interests and devotion to the process.

E. The Importance of Preventing Parties from Leaving Negotiations and Reengaging in Violent Actions

Undoubtedly, negotiations for national reconciliation between past violent groups and representatives from the diverse makeup of Iraq, each possessing different interests, will encounter roadblocks and controversies that may encourage some leaders to take the "easy" choice and exit the

¹⁴⁷ MITCHELL, *Making Peace*, *supra* note 22, at 44.

¹⁴⁸ *Id.* at 44; see Fearon & McWilliams, *supra* note 144, at 1258–61.

¹⁴⁹ See *supra* Part III.A.

¹⁵⁰ See *supra* Part III.B.

¹⁵¹ Iraqi Women Network, *Iraqi Women Network Conference: Commemorating Pioneer Women and Present Challenges for the Iraqi*, Jan. 7, 2008, <http://www.resistingwomen.net/spip.php?article280> (last visited June 2, 2009) (discussing the composition of the Iraqi Women Network).

¹⁵² See *id.*

negotiations.¹⁵³ Both the leader of the negotiations and other leaders representing groups within the negotiations should make strong efforts to prevent parties from leaving negotiations, which would essentially end the fully-inclusive process. Withdrawal by parties from the national reconciliation process will denigrate the achievement of the negotiations, by not being fully inclusive, and also, withdrawing parties may attempt to damage the negotiations during and after agreement by resorting to past violent behaviors that fuel hostilities.¹⁵⁴ Participants should discourage withdrawal, but avoid compromising solely due to fears that parties may withdraw and reengage in their violent tactics if they do not obtain their desires through the peaceful process.¹⁵⁵

Insight gained from analyzing the Northern Ireland peace process indicates the problems created and benefits gained when disgruntled parties withdraw from the process. Upon Sinn Féin's entrance into the bargaining table, both the DUP and UKUP withdrew.¹⁵⁶ According to Senator Mitchell, David Trimble, the leader of the largest unionist party remaining at the table, experienced daily attacks from leaders who withdrew, accusing him of selling out the union.¹⁵⁷ However, "[i]t was the fear, the anxiety, which gnawed away at every soul"¹⁵⁸ that allowed Trimble to have the support of his party, which allowed the process to continue and to finally reach agreement.¹⁵⁹ According to Mitchell, "reaching agreement without their [the DUP and UKUP] presence was difficult; it would have been impossible with them in the room."¹⁶⁰ Although these statements suggest that allowing

¹⁵³ See Mitchell, *Principles of Peace*, *supra* note 10, at 6 (acknowledging that leaders dislike risk and that a tough part of leading negotiations is having parties take risks, which are necessary for compromise).

¹⁵⁴ See e.g., DARBY, *supra* note 10, at 50–61 (discussing a return to political violence, tactical violence, spoiler violence by "Zealots", and policy implications due to return of violence).

¹⁵⁵ See *id.* at 58–61.

¹⁵⁶ MITCHELL, *Making Peace*, *supra* note 22, at 110–11.

¹⁵⁷ *Id.* at 173.

¹⁵⁸ *Id.* at 174.

¹⁵⁹ *Id.* at 174–75.

¹⁶⁰ *Id.* at 110. George Mitchell argued that their stonewalling would have never yielded peace because they were unwilling to compromise. However, he did not acknowledge that many of the other parties that seemed to be "set in stone" did eventually compromise. Senator Mitchell continued:

In a last-ditch effort to block an agreement, Ian Paisley led a few hundred of his supporters onto the grounds at Stormont. Angry at being denied entrance, they broke through a gate and surged up the hill to a monument to the legendary unionist leader Edward Cason They called Trimble a traitor and denounced the talks As

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parties to withdraw has benefits, if the goal is complete national reconciliation, the leaders must still make attempts to maintain all parties' involvement.

Those outside the discussions may target the negotiations during the process and after agreement is reached by the remaining parties. For example, Senator Mitchell explained that many outside parties attempted to end the Northern Ireland peace process through violence.¹⁶¹ While the Helsinki Agreement calls for resolving all political issues through non-violence and democracy,¹⁶² those who leave the negotiations will not need to abide by those tenets. In Iraq, a country torn apart by violent actions such as mosque bombings, assassinations, and suicide bombings of civilians, the fear of withdrawal and escalation of violence is real.¹⁶³ A time may come when a party's cooperation and inability to negotiate in good faith makes them an adversary to the whole process, but until leaders at the negotiation come to this absolute conclusion, they should discourage withdrawal. Compromise and understanding will come to each group at a different pace,¹⁶⁴ and inability to move should not be viewed as an absolute violation of good faith negotiating.¹⁶⁵

he tried to make a statement he was interrupted by loud, rude heckling. Some members of the loyalist party, once among the most fervent of his supporters, savagely accused him of running away He was the ghost of a violent past, now they wanted peace.

Id. at 177.

¹⁶¹ Mitchell, *Principles of Peace*, *supra* note 10, at 5 (describing the bombing in Omagh that killed twenty-nine people and arguing that atrocities such as this one were aimed at escalating sectarian violence and ending the peace process).

¹⁶² Crisis Management Initiative, *supra* note 27.

¹⁶³ Dahr Jamail, *Mirage of Improvement in Iraq: Yet Another Facelift for the Failed Occupation*, ISLAM ONLINE, Dec. 10, 2007, http://www.islamonline.net/servlet/Satellite?c=Article_C&cid=1196786126550&pagina me=Zone-English-Muslim_Affairs%2FMAELayout (last visited June 2, 2009) (arguing that recent success comparisons to immediate post-war statistics are misleading. He indicates that violence and the possibility of an escalation of violence are present in Iraq today).

¹⁶⁴ See Peter Guyon Earle, Note, *The Impasse Doctrine*, 64 CHI.-KENT L. REV. 407, 420 (1988) (discussing how the length of negotiations relates to the possibility of impasse).

¹⁶⁵ See generally Kimberlee Kovach, *Lawyer Ethics in Mediation: Time for a Requirement of Good Faith in Mediation*, 4 DISP. RESOL. MAG. 9, 11 (Winter 1997) (although discussing mediation, Kovach stated "good faith relates to the manner of participation rather than its content Good faith does not imply that parties are required to resolve their disputes, and certainly should not be used to coerce the parties to settle the matter on any particular economic basis.").

Withdrawal may make negotiating difficult because withdrawing parties may resort to past tactics, but the withdrawing parties may also pose additional challenges in implementing any of the agreements reached through negotiations for national reconciliation. Parties that withdraw may feel that any agreement reached is contrary to their principles and beliefs and, therefore, may attempt to stymie any implementation of the proposals.¹⁶⁶ The DUP and UKUP attempted this approach following the Good Friday Agreement and, consequently, their efforts were one of the reasons that reaching agreement was not the end of conflicts in Northern Ireland.¹⁶⁷ The negotiating parties must be interested in effective implementation following agreement, and the concern that withdrawing parties will attempt to block implementation should encourage participating parties to discourage withdrawal of those involved in the negotiations for national reconciliation.

The Helsinki Agreement has potentially set the wheels in motion towards national reconciliation in Iraq.¹⁶⁸ Any future negotiations should allow all interested parties from Iraq to participate in the discussions.¹⁶⁹ Although tactics such as “sufficient consensus” and splitting parties into different rooms may be used, the talks should allow all voices to be heard if true national reconciliation is to be reached.¹⁷⁰ It may be inevitable that some parties attempt to withdraw as compromises are made and risks taken, but those leading the discussions should strive to keep parties from withdrawing so that the discussions remain fully inclusive.¹⁷¹ Iraq is going through

¹⁶⁶ Vaughan, *supra* note 21, at 516 (“The crux of the unionist opposition was based on the fact that their leadership had not been included in the discussion and agreement to the plan.”).

¹⁶⁷ *Id.* at 533 (stating “Those opposed to the agreement used every opportunity to delay implementation process.”).

¹⁶⁸ McGuinness in *Iraqi Peace Negotiations*, *supra* note 32 (stating that “participants committed themselves to work towards a robust framework for a lasting settlement.”).

¹⁶⁹ See *supra* Part III.B.

¹⁷⁰ See *supra* Part III.B; see also George J. Mitchell, *Jackson H. Ralston Lecture: Negotiating for Peace in Northern Ireland*, 37 STAN. J. INT’L L. 163, 166 (2001). George Mitchell stated that:

[N]ot for a single moment, was I able to get all the parties into the same room at the same time. Never once did all of them sit down together. Most of the negotiations were conducted in what has come to be known as a proximity basis: one group in one room, another group in another room, often in separate buildings. I shuttled back and forth between them.

Id.

¹⁷¹ DARBY, *supra* note 10, at 58 (stating “The key policy objective, therefore, is to ensure that [Dealers] remain in the process.”).

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dramatic times, and processes such as a negotiation for national reconciliation may be one of the best tactics to cure misunderstanding and lead to a peaceful democracy.

IV. QUALIFICATIONS OF THE LEADER(S) IN NEGOTIATIONS FOR NATIONAL RECONCILIATION

All forms of alternative dispute resolution utilize a leader that aids the process, and some of these processes even allow or mandate the leader to make a final binding decision.¹⁷² There are some qualities that all effective leaders should possess; however, the role of the leader and the process used may prioritize certain qualities and qualifications over others.¹⁷³ This section will discuss fundamental characteristics or qualifications a leader should possess, the character traits that allowed Senator Mitchell and his leadership group to succeed in Northern Ireland, and characteristics of leaders in existing alternative dispute resolution processes in Muslim culture. Ultimately, a neutral, foreign facilitator instead of a biased, local evaluator should lead negotiations for national reconciliation in Iraq.

A. Fundamental Characteristics or Qualifications of an Effective Leader of Negotiations for National Reconciliation in Iraq

The leader of negotiations for national reconciliation in Iraq will essentially assume the role of a mediator because the Helsinki Agreement does not call for the leader of the talks to make a binding decision.¹⁷⁴ American scholars have argued over an appropriate role of a mediator for at least the last forty years.¹⁷⁵ Nonetheless, there is wide agreement that the

¹⁷² American Arbitration Association, Arbitration and Mediation, <http://www.adr.org/sp.asp?id=28749> (last visited June 2, 2009) (providing a basic definition for mediation and arbitration and illustrating the distinction between a decisionmaker and a facilitator).

¹⁷³ See generally Report of the Society of Professionals in Dispute Resolution (SPIDR) Commission on Qualifications, Dispute Resolution Forum (Washington D.C. 1989), in JAMES J. ALFINI ET AL., *MEDIATION THEORY AND PRACTICE* 402–04 (2d ed. 2006) (providing insight into what qualifications an arbitrator or mediator should have for different types of disputes).

¹⁷⁴ The fourth recommendation of the Helsinki Agreement provides: “All parties will commit to accept the results of the negotiations and no party can be subject to a threat of force from any groups that reject all or part of any agreement reached.” Crisis Management Initiative, *supra* note 27.

¹⁷⁵ See Leonard L. Riskin, *Understanding Mediators’ Orientations, Strategies, and Techniques: A Grid for the Perplexed*, 1 HARV. NEGOT. L. REV. 7, 23–38 (1996)

mediator must possess qualities necessary for inspiring confidence and trust amongst the participants.¹⁷⁶ Therefore, it is essential that leaders be intelligent, patient, and active listeners.¹⁷⁷ After looking at the example set in Northern Ireland, characteristics of dispute resolution inherent in Islamic culture, and the magnitude of parties advocated for in an all-party resolution process, an impartial outsider will be the most reasonable person to chair the process. Strict impartiality of the leader, advocated for in the *Model Standards of Conduct For Mediators*,¹⁷⁸ is essential to the integrity of the whole process, prevents predicaments occurring due to favoritism, and allows the process to be party-oriented.¹⁷⁹

B. Leadership Qualities and Characteristics in the Northern Ireland Peace Process

Senator Mitchell, the chairman of the Northern Ireland peace process, has set an example of the type of qualifications a leader of a national peace process should embody in order to promote, develop, and effectively conclude the peace process.¹⁸⁰ Above all, the leader should believe that there is “no such thing as a conflict that can’t be ended,” and they should believe, “No matter how ancient the conflict, no matter how hateful, no matter how hurtful, peace can prevail.”¹⁸¹ Stubborn but realistic optimism is essential to

(discussing Evaluative/Facilitative and Broad/Narrow approaches); see also Donald T. Weckstein, *In Praise of Party Empowerment—And of Mediator Activism*, 33 WILLAMETTE L. REV. 501, 527–60 (1997) (discussing mediator activism).

¹⁷⁶ John D. Feerick, *The Peace-Making Role of a Mediator*, 19 OHIO ST. J. ON DISP. RESOL. 229, 231 (2003).

¹⁷⁷ See *id.*; see also HOWARD GARDNER, CHANGING MINDS: THE ART AND SCIENCE OF CHANGING OUR OWN AND OTHER PEOPLE’S MINDS 108–12 (2006) (arguing that the hallmarks of the effective leader are intelligence, instinct, and integrity).

¹⁷⁸ “A mediator shall decline a mediation if the mediator cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice.” MODEL STANDARDS OF CONDUCT FOR MEDIATORS 4 (Am. Bar Ass’n, Am. Arb. Ass’n, Ass’n for Conflict Resol., Aug. 2005) available at <http://www.abanet.org/dispute/news/ModelStandardsofConductforMediatorsfinal05.pdf>.

¹⁷⁹ See Association for Conflict Resolution, *Model Standards for Conduct of Mediators* 1994 (AAA, ABA, SPIDR), <http://www.acrnet.org/about/initiatives/QualityAssurance/standards-conduct.htm> (last visited June 2, 2009) (commenting on what is meant by impartiality in Section II and stating that the overall “quality of the mediation process is enhanced when the parties have confidence in the impartiality of the mediator.”).

¹⁸⁰ Feerick, *supra* note 176, at 238 (reasoning that “[t]he manner in which Senator Mitchell conducted himself throughout the talks made its success possible.”).

¹⁸¹ Mitchell, *Principles of Peace*, *supra* note 10, at 5.

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an effective leader because despair and pessimism surround discussions between parties that have used violent tactics in the past.¹⁸²

Patience, devotion, perseverance, sensitivity, innovativeness, and experience are all characteristics Senator Mitchell possessed that allowed him to be an effective leader of the Northern Ireland peace process.¹⁸³ Patience is needed because incremental movements may occur very slowly during discussions for national reconciliation.¹⁸⁴ Senator Mitchell's devotion and perseverance allowed him to successfully lead as outsiders attempted to end ceasefires, roadblocks occurred, parties withdrew, and his own personal life suffered tragedies.¹⁸⁵ Mitchell's sensitivity to the parties and their allegiances, to their cultural customs, and to the process itself were all keys

¹⁸² See *id.* at 5 (discussing how people thought he was wasting his time and conflict could never be ended because of the centuries of killing that doomed the region. Senator Mitchell believed in order for leaders to do their job and lead, they must create an "attitude of success, the belief that things can be better. Not in a foolish or unrealistic way, but in a way that creates hope and confidence among the people.").

¹⁸³ See generally, Feerick, *supra* note 176, 238–41.

¹⁸⁴ Senator Mitchell described the pace of negotiations when he asserted:

For hundreds and hundreds of hours I had listened to the same arguments, over and over again. Very little had been accomplished. It had taken two months to get an understanding on the rules to be followed once the negotiations began. Then it took another two months to get agreement on a preliminary agenda. Then we had tried for fourteen more months to get an accord on a detailed final agenda . . . I bit my lip, squirmed in my seat, and worked hard not to let my anger show.

MITCHELL, *Making Peace*, *supra* note 22, at 126. UUP Deputy Leader John Taylor said Senator Mitchell "has shown great ability and tremendous patience and tolerance from the word go." *Id.* at 69.

¹⁸⁵ Senator Mitchell vividly exclaimed:

Sometimes the mountains seem so high and the rivers so wide that it is hard to continue the journey. But no matter how bleak the outlook, the search for peace must go on.

Seeking an end to conflict is not for the timid or the tentative. It takes courage, perseverance, and steady nerves in the face of violence.

Mitchell, *Toward Peace*, *supra* note 12, at 1140; see also MITCHELL, *Making Peace*, *supra* note 22, at 65–69, 74–75 (discussing the passing of his brother Robbie and his decision to stay at the talks for two days because of the potential for progress, which in his mind led to the stakeholders growing acceptance of him. Mitchell also discussed his wife Heather's loss of a child during her pregnancy, and how the both of them still justified his continuing to lead in the Northern Ireland peace process); Feerick, *supra* note 176, at 238 (discussing Senator Mitchell's perseverance).

to his effective leadership.¹⁸⁶ In addition, Mitchell's experience as the majority leader in the United States' Senate provided him with experience necessary for understanding trade-offs, communication, and effective listening.¹⁸⁷

C. Dispute Resolution and Characteristics of Dispute Resolution Leaders in Muslim Culture

Iraq is predominantly a Muslim country,¹⁸⁸ and there is a long-standing tradition in Islamic culture that encourages resolution of disputes between Muslims peacefully.¹⁸⁹ The process resulting in *sulh*—compromise, settlement, or agreement between disputing parties—in Islam “end[s] conflict and hostility among believers so that they may conduct their relationships in peace and amity.”¹⁹⁰ *Sulh* is a legally binding form of contract, and its purpose seems consistent with the Western concept of alternative dispute resolution.¹⁹¹ “Under Islamic law, ADR and the court systems are essentially mixed, but, historically, the court systems have relied on the concept of *sulh* to dispense justice more efficiently than court-ordered mediation in Western systems.”¹⁹²

A *qadi* (Islamic judge) helps disputing parties reach *sulh*.¹⁹³ During Ottoman rule, “*Qadis* preferred reconciliation between the parties instead of

¹⁸⁶ See Feerick, *supra* note 176, at 236–37 (discussing the importance of symbols, such as what locations would be the venues for the talks that would take place and his decisions on how many people should be at each discussion).

¹⁸⁷ See MITCHELL, *Making Peace*, *supra* note 22, at ix, 5. Mitchell also noted that his political experience taught him “the importance of having a plan and sticking to it while retaining the flexibility to make adjustments as circumstances change; the necessity of total commitment; and the need for patience and perseverance to overcome inevitable setbacks.” *Id.* at 8.

¹⁸⁸ See *Religious Structures*, *supra* note 45.

¹⁸⁹ See Mohammed Abu-Nimer, *Conflict Resolution in an Islamic Context: Some Conceptual Questions*, 21 PEACE & CHANGE 22, 23 (1996) (acknowledging that dispute resolution procedures “have been applied to settle interpersonal, community, and inter-religious disputes in Islamic societies for hundreds of years.”).

¹⁹⁰ Walid Iqbal, *Courts Lawyering, and ADR: Glimpses into the Islamic Tradition*, 28 FORDHAM URB. L.J. 1035, 1035 (2001) (mentioning that this would typically involve alternative dispute resolution procedures).

¹⁹¹ Joshua F. Berry, Note, *The Trouble We Have with the Iraqis Is US: A Proposal for Alternative Dispute Resolution in the New Iraq*, 20 OHIO ST. J. ON DISP. RESOL. 487, 502 (2005).

¹⁹² *Id.* at 502 (citing Iqbal, *supra* note 190, at 1035–36).

¹⁹³ See Iqbal, *supra* note 190, at 1036–39. A definition of the *qadi* is:

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enforcement of a judgment.”¹⁹⁴ The process of mediation helped settle many cases, and “the parties reached *sulh* on ‘mutually acceptable terms and surrendered all rights to further claim on the matter.’”¹⁹⁵ The *qadi* courts had a noticeable difference from formal courts for being simple and informal by using minimal procedural intricacies.¹⁹⁶

Mediation allows parties to avoid public confrontation in a courtroom, and this fact is very important in the Muslim culture, “which places a high value on honor, dignity, and self-respect.”¹⁹⁷ While Americans are often concerned with mediation procedures that assure fairness, neutrality, and a process that leads to an acceptable solution, generally, Muslims are instead concerned with honor and dignity.¹⁹⁸ A mediator in Muslim culture often “is someone who can help resolve the conflict while maintaining honor and group harmony,”¹⁹⁹ and sometimes committees are chosen to lead the mediations.²⁰⁰ Consequently, Muslims often want a mediator or leader that they know either personally or through reputation and respect.²⁰¹

Judge in Islam, whose responsibility is restricted to issues connected to religion. A *qadi* must be a man educated in Islamic science, and his performance must be totally congruent with *Sharia* without using his own interpretation A *qadi* must not receive gifts from participants in a trial and he must be careful in engaging himself in trade The origin of the institution of *qadi*, is the old Arab arbitrator, the *hakam*, but qualities from officials in areas conquered by Arabs have been added to the structure.

Tore Kjeilen, *Qadi*, LOOKLEX ENCYCLOPEDIA, <http://looklex.com/e.o/qadi.htm> (last visited June 2, 2009).

¹⁹⁴ Berry, *supra* note 191, at 503 (citing Iqbal, *supra* note 190, at 1037).

¹⁹⁵ *Id.* (quoting Iqbal, *supra* note 190, at 1037).

¹⁹⁶ See Iqbal, *supra* note 190, at 1038–42 (discussing self-representation, the fact that confrontation of the defendant by the plaintiff, the use of oaths, and the presence of reliable witnesses were indispensable to the process, but also that the courts were simple, personal, and unbiased).

¹⁹⁷ See Berry, *supra* note 191, at 511–12.

¹⁹⁸ *Id.* at 512.

¹⁹⁹ *Id.*

²⁰⁰ *Id.* 516–19.

²⁰¹ See George E. Irani, *Islamic Mediation Techniques for Middle East Conflicts*, 3 MIDDLE EAST R. INT’L AFF. 1, 5 (1999), available at <http://meria.idc.ac.il/journal/1999/issue2/irani.pdf> (explaining that in Arab culture “the mediator is perceived as someone having all the answers and solutions ‘If [the mediator] does not provide the answers, he or she is not really respected or considered to be legitimate.’”).

D. Impartiality and Recommended Leaders of the National Reconciliation Process Called for in the Helsinki Agreement

The diversity and number of participants in a process for national reconciliation, the magnitude of the process, and prior complaints of favoritism²⁰² all support a need for an impartial leader in the negotiations for national reconciliation in Iraq. Although this may be contrary to some of the customs of the Muslim participants, impartiality will be essential to the fairness and effectiveness of the process.²⁰³ In addition, the leaders of the negotiations should take a facilitative rather than evaluative approach.²⁰⁴

The violent cross-cultural conflict in Iraq has estranged communities and increased misunderstandings;²⁰⁵ it also involves groups with competing goals and interests.²⁰⁶ An independent third party without a vested interest in the outcome is in the best position to facilitate the discussions.²⁰⁷ Of course, the leader must make strong efforts to gain an understanding of the culture, traditions, people, and issues involved in the process for national reconciliation.²⁰⁸ Although some may argue that this is just another outsider becoming involved in Iraq, to date, no Iraqi leader has stepped forward and

²⁰² See Hamoudi, *supra* note 38, at 1316 (discussing the “charge” of “nonparticipation of the Sunnis” in the Iraqi constitutional process).

²⁰³ See Feerick, *supra* note 176, at 229 (stating that a great mediator must adhere to “strict impartiality” throughout the process); Robert H. Mnookin, *Why Negotiations Fail: An Exploration of Barriers to the Resolution of Conflict*, 8 OHIO ST. J. ON DISP. RESOL. 235, 248 (1993) (arguing that “To the extent that a neutral third party is trusted by both sides, the neutral may be able to induce the parties to reveal information about their underlying interests, needs, priorities, and aspirations that they would not disclose to their adversary.”).

²⁰⁴ Lela P. Love, *The Top Ten Reasons Why Mediators Should Not Evaluate*, 24 FLA. ST. U. L. REV. 937, 937–48 (1997) (arguing that while arbitrators, judges, and neutral experts evaluate, mediators should assist the parties in coming to their own decisions).

²⁰⁵ See *supra* Part III.A.

²⁰⁶ See *supra* Part III.A.

²⁰⁷ “Each side [in Northern Ireland] is normally suspicious of ‘outsiders’ and especially suspicious of those who spend time with the opposition There are very few, if any truly neutral people While we need not to feign neutrality, we do . . . need to remain impartial Impartiality is an important hallmark of a mediator.” Brendan McAllister, *Mediation: A Tool for Change—Northern Ireland Experience*, 18 CONFLICT RESOL. NOTES, 28, 28–29 (2001). McAllister later described impartiality as “open-minded.” *Id.*; see also Feerick, *supra* note 176, at 241 (discussing the importance of impartial mediators, but emphasizing the need to become familiar with the diverse backgrounds’ of all the parties involved).

²⁰⁸ See Feerick, *supra* note 176, at 241.

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demonstrated enough universal appeal to gain the trust and cooperation of all interested parties.

Some scholars do not support a foreign, neutral leader of discussions, advocating instead for mediators with similar regional identities to the parties involved because they believe these leaders have stronger incentives to improve their own regional stability.²⁰⁹ However, the different factions within Iraq may anticipate biases in an Iranian, Turkish, or Saudi Arabian leader who they will likely perceive as an advocate for people of the leader's own ethnicity or religion.²¹⁰ Therefore, animosity may develop instead of trust between the leader of the discussions and the parties involved.²¹¹ In addition, due to globalization, the instability of Iraq has an impact on individuals around the world,²¹² and so everyone has a stake in lasting peace in Iraq.

Others argue for a balanced team of leaders composed of individuals who each share personal characteristics with one of the disputing parties.²¹³ These scholars believe this leadership mechanism for mediation increases the leaders' credibility due to their implied genuineness.²¹⁴ However, the previously outlined characteristics of a strong leader should allow an impartial, third party to develop trust through their own genuineness without

²⁰⁹ See Marie Olson & Frederic S. Pearson, *Civil War Characteristics, Mediators, and Resolution*, 19 CONFLICT RESOL. Q. 421, 421–45 (2002).

²¹⁰ A recent estimate by the Central Intelligence Agency provides that 89% of Iranians are Shi'ite. Central Intelligence Agency, *THE WORLD FACTBOOK-IRAN*, <https://www.cia.gov/library/publications/the-world-factbook/geos/ir.html> (last visited June 2, 2009). The majority of Saudi Arabians are Sunni. U.S. Department of State, *Saudi Arabia: International Freedom Religious Report* (2004), <http://www.state.gov/g/drl/rls/irf/2004/35507.htm> (last visited June 2, 2009). And, Turkey has recently withdrawn troops from Iraq after fighting against Kurdish rebels. *Iraq Incursion Finished, Turkey Says*, CNN, Feb. 29, 2008, <http://edition.cnn.com/2008/WORLD/meast/02/29/iraq.main/index.html> (last visited June 2, 2009); see also *Iraq Poll 2007*, *supra* note 82, at Question 38 (showing a majority of Iraqis believe Syrians, Iranians, and Saudi Arabians are actively engaged in encouraging sectarian violence in Iraq).

²¹¹ See McAllister, *supra* note 207, at 28–29.

²¹² William Scheuerman, *Globalization*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <http://plato.stanford.edu/entries/globalization/> (last visited June 2, 2009) (defining globalization as “fundamental changes in the spatial and temporal contours of social existence, according to which the significance of space or territory undergoes shifts in the face of a no less dramatic acceleration in the temporal structure of crucial forms of human activity.”).

²¹³ See Feerick, *supra* note 176, at 244–45 (discussing Herbert Kelman's Program on International Conflict Analysis and Resolution (PICAR) at Harvard University).

²¹⁴ *Id.*

running as large a risk of bias and favoritism. In addition, leaders tied to individual groups may instigate clashes between leadership, rather than a unified approach to leadership.

Leaders from Northern Ireland, including Jeffrey Donaldson,²¹⁵ Padraig O'Malley,²¹⁶ Billy Hutchinson,²¹⁷ John Alderdice,²¹⁸ and Martin McGuinness,²¹⁹ leaders from South Africa including Mac Maharaj²²⁰ and Roelf Meyer,²²¹ and Finnish President Martti Ahtisaari,²²² having already begun to develop a relationship with the sixteen delegates who drafted the Helsinki Agreement,²²³ may potentially be strong leaders of the negotiations for national reconciliation. There may be concerns that those related to the British government possess a conflict of interest with the fifth recommendation to the Helsinki Agreement: "To work to end international and regional interference in internal Iraqi affairs."²²⁴ There also may be concerns that new parties will not have the same relationship as those who already have accomplished the Helsinki Agreement with these leaders. This fear should be mitigated by these leaders' experiences and the fact that the prior meetings only lasted four days. Since the leaders who led the process that promoted the creation of the Helsinki Agreement appear neutral and possess experience, as well as many of the other desired qualities of successful leaders, they should continue leading the negotiations for national reconciliation in Iraq.

²¹⁵ Jeffrey Donaldson-About Me, <http://www.jeffreydonaldson.org/AboutMe.asp> (last visited June 2, 2009).

²¹⁶-Padraig O'Malley, [http://www.omalley.co.za/NXT/gateway.dll?f=templates&fn=default.htm\\$vid=Omalley:OmalleyView&nppusername=OmalleyUser&npppassword=OmalleyPass](http://www.omalley.co.za/NXT/gateway.dll?f=templates&fn=default.htm$vid=Omalley:OmalleyView&nppusername=OmalleyUser&npppassword=OmalleyPass) (follow "The Heart of Hope" hyperlink; then follow "A Gatherer of Minds" hyperlink; then follow "Biography O'Malley" hyperlink) (last visited June 2, 2009).

²¹⁷ Billy Hutchinson, Biography, <http://www.pup-ni.org.uk/people/billyhutchinson.aspx> (last visited June 2, 2009).

²¹⁸ Lord Alderdice, <http://www.libdems.org.uk/?link=people.html> (follow "peers" hyperlink; then follow "Lord Alderdice" hyperlink) (last visited June 2, 2009).

²¹⁹ Mid Ulster-Martin McGuinness, <http://sinnfein.ie/elections/candidate/3> (last visited June 2, 2009).

²²⁰ Biography of Mac Maharaj, <http://www.anc.org.za/people/maharaj.html> (last visited June 2, 2009).

²²¹ Roelof Petrus (Roelf) Meyer, Curriculum Vitae, available at www.issafrica.org/AF/profiles/SouthAfrica/satpaxcdrom/files/CV%20Meyer.pdf.

²²² President Martti Ahtisaari, Curriculum Vitae, available at http://www.cmi.fi/?content=cv_board&id=1.

²²³ See McGuinness in *Iraqi Peace Negotiations*, *supra* note 32.

²²⁴ Crisis Management Initiative, *supra* note 27.

V. SETTING A DEADLINE—WOULD A LEADER WANT TO EMPLOY THIS TACTIC AT THE BEGINNING OF NEGOTIATIONS?

Although negotiations for national reconciliation of Iraq are in their nascent stages, this section will discuss whether or not a leader should set a deadline for concluding the discussions with an agreement or solution at the outset of the process. Leaders of the negotiations for national reconciliation should determine this strategic option prior to commencing any discussions with the interested parties. While this section will discuss whether or not a leader should set a deadline at the beginning of the process,²²⁵ potentially, the leaders will never set a deadline, and agreement may be reached without ever employing this tactic.

“Deadlines define the limits regarding the period of time in which agreement must be reached.”²²⁶ Deadlines are often effective because they imply negative consequences if the parties fail to achieve an agreement by the agreed upon settlement date.²²⁷ Scholars argue deadlines may have a stimulating effect on negotiations because of the “scarcity effect,” which “refers to our human tendency to want things more when we think the supply is running out.”²²⁸ Essentially, the “scarcity effect” implies a leader’s imposition of a deadline on the negotiations can motivate parties to engage and act in their negotiations because they feel that time is running out on a valuable opportunity.²²⁹

Senator Mitchell successfully moved up the deadline during the Northern Ireland peace process to Good Friday.²³⁰ Although a deadline had been set at the beginning of the process,²³¹ Senator Mitchell decided an earlier date

²²⁵ Sometimes deadlines will need to be ratified by the interested parties. See Feerick, *supra* note 176, at 237.

²²⁶ Alain B. Burrese, *Negotiation Theory & Practice: Deadlines*, 31 MONT. LAWYER 22, 22 (April 2006).

²²⁷ *Id.* at 22–23.

²²⁸ G. RICHARD SHELL, *BARGAINING FOR ADVANTAGE: NEGOTIATION STRATEGIES FOR REASONABLE PEOPLE* 180 (1999).

²²⁹ *Id.*; see also Craig A. McEwan & Roselle L. Wissler, *Finding Out If It Is True: Comparing Mediation and Negotiation Through Research*, 2002 J. DISP. RESOL. 131, 136 (2002) (arguing that “Depending on how it is structured, mandated mediation could keep the process moving by setting deadlines and creating a negotiation event that induces clients and lawyers to focus seriously on the case.”); Burrese, *supra* note 227, at 23 (contending that “without a deadline, or at least the perception of a deadline, there is little inducement for taking action, much less for accommodation and compromise.”).

²³⁰ Feerick, *supra* note 176, at 237.

²³¹ Senator Mitchell noted that the legislation that established the legal basis established a deadline of May 1998 and, during the talks, Prime Minister Tony Blair once

would promote action.²³² He “concluded that a deadline for negotiations was necessary if there was to be any chance of success” and that “existence of a deadline couldn’t guarantee success—but it made it possible.”²³³ His decision was based on a belief that the parties would fail to decide anything because final decisions encompassed so much risk and danger, and it was easier to just continue to talk and discuss possibilities.²³⁴ Another element influencing his decision was that events outside the negotiations were beginning to escalate, and one polarizing violent act outside the negotiations could potentially dissolve any camaraderie developed between the parties causing the negotiations to either stall or implode.²³⁵ Senator Mitchell’s decision to move the deadline successfully encouraged all the parties to devote themselves to non-stop negotiations, which led to the Good Friday Agreement and, in Mitchell’s opinion, prevented failure.²³⁶

Although setting a deadline at the beginning of negotiations for national reconciliation may stimulate the parties, a deadline also bears potentially negative consequences. One danger is that an agreement may not be accomplished by the deadline. Naturally, if this occurs, there are two potential results: negotiations end without agreement, or negotiations continue without observing the deadline. While the former result would obviously disappoint the parties, the latter outcome would devalue the positive attributes of a future, more realistic, deadline.²³⁷ Therefore, leaders of negotiations for national reconciliation should first determine a realistic timetable, and only after they gain an understanding of the complexities of the negotiations should they establish a deadline (if they believe a deadline is necessary).

Setting deadlines early in the process may have other negative consequences. A deadline may encourage parties to play “chicken.”²³⁸ The consequence of this game, in which each party delays making concessions until the deadline is imminent, is that either one party gives in, rather than achieving compromise, or else none of the parties make concessions, forcing

tried to invigorate the process by calling attention to the existing deadline and pledging to enforce it. MITCHELL, *Making Peace*, *supra* note 22, at 103.

²³² *Id.* at 126.

²³³ Mitchell, *Principles of Peace*, *supra* note 10, at 3.

²³⁴ *Id.*

²³⁵ MITCHELL, *Making Peace*, *supra* note 22, at 126.

²³⁶ Mitchell, *Principles of Peace*, *supra* note 10, at 3; *see also* Feerick, *supra* note 176, at 237.

²³⁷ *See* Burrese, *supra* note 227, at 23.

²³⁸ *Id.*

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all parties to endure consequences that they most likely do not desire.²³⁹ Further, “a fixed deadline may not offer the best foundation for a permanent or even long-term settlement, particularly if principles are forgotten in the process”²⁴⁰ because parties may insert ambiguous provisions into the agreement or just consent to a symbolic agreement.²⁴¹ Leaders may likewise ignore contentious issues or principles in order to allow an agreement to be reached by the predetermined deadline.²⁴² Pressure may potentially encourage parties to cave and agree to terms that they will not adhere to after removing themselves from the process and analyzing the effects of the agreement. One final negative consequence of setting an early deadline is that parties will not be able to solidify their viewpoints, and the more empowered, organized parties, therefore, will be more successful in achieving agreements that benefit their followings, rather than Iraq as a whole.²⁴³

While many Iraqis are interested in swift negotiations with the potential of developing national reconciliation in Iraq, a peaceful Iraq, and the departure of occupying forces,²⁴⁴ leaders of the negotiations should not establish a deadline until assessing the complexities of the negotiations. Deadlines are an effective tool in negotiations because they apply pressures upon the parties. However, the discussed consequences are severe, and a leader should have a thorough understanding of the process and the pace of the negotiations before using this strategic tool. While leaders should be aware of the effects of deadlines at the beginning of the negotiations, a thorough assessment of the parties, their values, the complexities, and the desired agreement should occur before leaders establish a deadline. This should allow for a strong agreement to be reached rather than an ambiguous, symbolic one.

²³⁹ *Id.*

²⁴⁰ Kennedy, *supra* note 134, at 1461.

²⁴¹ *Id.* at 1461–62 (arguing that the Northern Ireland peace process resulted in agreements that did not answer all the essential questions, such as what is meant by “separate but equal,” and that a hard-pressed negotiator that is desperate for an agreement will seize upon ambiguities that parties are willing to agree upon).

²⁴² *Id.* at 1462.

²⁴³ See KEVIN AVRUCH, *CULTURE & CONFLICT RESOLUTION* 48–55 (1998). Avruch states that “the idea that truly weaker parties can be empowered inside the workshop space is unproven.” *Id.* at 51; see generally DEAN G. PRUITT & PETER J. CARNEVALE, *NEGOTIATION IN SOCIAL CONFLICT* 130–32 (1993) (discussing the roles of power and relative power in negotiations).

²⁴⁴ *Iraq Poll 2007*, *supra* note 82, at Questions 4, 14, 19.

VI. CONCLUSION

Iraq has a long history of disputes between its political, religious, and ethnic parties.²⁴⁵ Following the invasion and occupation of Iraq by foreign forces,²⁴⁶ Iraqis drafted and passed a new constitution, held national elections, and begun a new era of governance.²⁴⁷ Nonetheless, conflict still permeates daily life in Iraq,²⁴⁸ and blocs within Iraq have not achieved national reconciliation. In late-August and early-September of 2007, Iraqi leaders began the process of negotiations for national reconciliation by signing the Helsinki Agreement.²⁴⁹ The promising Helsinki Agreement provides recommendations for negotiations for national reconciliation and political objectives, but it does not address all the logistical issues relating to the process.²⁵⁰

This note addressed which parties should be included in the negotiations for national reconciliation in Iraq,²⁵¹ characteristics of leaders of the negotiations,²⁵² and whether a deadline should be established at the outset of the negotiations.²⁵³ For many reasons, including the potential for a long-lasting agreement, the negotiations for national reconciliation in Iraq should be fully-inclusive.²⁵⁴ Leaders with experience in conflict resolution initiated the discussions that led to the Helsinki Agreement, and the relationships that they developed will lay a foundation for a successful process; therefore, they should lead future negotiations.²⁵⁵ Further, since these leaders have not had a sufficient amount of time and exposure to the parties and complexities of the process, they should not currently establish a deadline for the negotiations to

²⁴⁵ See *supra* Part III.A.

²⁴⁶ See generally GORDON & TRAINER, *supra* note 1.

²⁴⁷ Kenneth Katzman, Iraq: Elections, Government, and Constitution, CRS Report for Congress (August 2, 2005), available at <http://price.house.gov/issues/uploadedfiles/foreign4.pdf> (Mr. Katzman is a specialist in Middle Eastern Affairs in the Congressional Research Office's Foreign Affairs, Defense, and Trade Division).

²⁴⁸ See *Iraq Poll*, *supra* note 82.

²⁴⁹ CMI Press Release, *supra* note 29.

²⁵⁰ Crisis Management Initiative, *supra* note 27.

²⁵¹ See *supra* Part III.B.

²⁵² See *supra* Part IV.

²⁵³ See *supra* Part V.

²⁵⁴ See *supra* Part III.B.

²⁵⁵ See *supra* Part IV.D.

conclude—although they may eventually determine a deadline is necessary.²⁵⁶

Inclusion, leadership, and deadlines are just three of the many logistical issues that the leaders of the negotiations for national reconciliation must address in order to lead a successful process. These leaders have many other logistical issues they will need to resolve prior to opening negotiations. For example, the location(s) of the negotiations must be determined, the role of the press must be addressed, and prioritization of interests must be established. The leaders must determine whether holding discussions in one grand room with all parties or dividing into subgroups will be more effective. In addition, the leaders and parties must always analyze whether a separate alternative exists that will more effectively achieve national reconciliation. These are just some of the issues that must be analyzed to control a successful dispute resolution process.

Iraqi leaders have already begun the process towards national reconciliation in Iraq by drafting the Helsinki Agreement. Drawing ideas from the Northern Irish and South African leaders over four days in the fall of 2007, these Iraqi leaders have begun to appreciate prior peace processes. As negotiations continue, leaders of different Iraqi blocs, and leaders of the negotiations, should continue to study the success of earlier peace processes in order to gain a better understanding of how peace is created.²⁵⁷ Approaching this process in Iraq as passionately as those involved in the Northern Ireland peace process may one day allow Iraqi leaders to utter words similar to Tony Blair's when he stated, "Look back and we see centuries marked by conflict, hardship, even hatred among the people of these islands. Look forward and we see the chance to shake off those heavy chains of history."²⁵⁸

²⁵⁶ See *supra* Part V.

²⁵⁷ As Dorothy Thompson once said after her journalistic experience during the Second World War, "Peace has to be created, in order to be maintained. It is the product of Faith, Strength, Energy, Will, Sympathy, Justice, Imagination, and the triumph of principle. It will never be achieved by passivity and quietism." Dorothy Thompson Quotes, http://www.quotationspage.com/quotes/Dorothy_Thompson/ (last visited June 2, 2009).

²⁵⁸ Owen Bowcott, *A Laugh and a Look into the Future as Old Foes Join Forces at Last to Share Power at Stormont*, THE GUARDIAN, May 9, 2007, at 4, available at <http://www.guardian.co.uk/politics/2007/may/09/uk.northernireland1> (quoting Tony Blair paying tribute to his predecessor, Sir John Major, for initiating the peace process).

